

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 02.11.2018

JUDGMENT PRONOUNCED ON :15.11.2018

CORAM

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

Review Application No.90 of 2018

K.Karthickkumar

... Petitioner

Vs

1.The Principal Secretary
Commissioner of Land Reforms
Fort St.George, Chennai.

2.The District Collector
Namakkal District, Namakkal.

3.The Revenue Divisional Officer
Namakkal District, Namakkal.

4.The Tahsildhar
Namakkal District, Namakkal.

5.P.Ganesan (Deceased)

6.Saraswathi

7.Anbalagan

8.Rajamani

9.K.Baskar

.. Respondents

Prayer .: Review Petition filed under Order 47 Rule 1 and 2 of CPC read with Section 114 of Civil Procedure Code, to review the order passed in

WP.No.25712 of 2013 dated 06.09.2017.

For Petitioner : Mr.Sriram
for Mr.G.K.R. Pandian

For Respondents : Mr.S.R.Rajagopalan
Additional Advocate General &
Mr.Govindasamy
Special Govt Pleader [R1 to R4]

Mr.S.Baskaran [R6 & R7]

Mr.V.Raghavachari
for Mr.R.Prabhakaran &
Mr.Marudhu Pandian [R8 & R9]

ORDER

[Judgment of the Court delivered by N.SESHASAYEE, J.]

The writ petitioner has filed this review petition for reviewing in entirety the order passed in W.P.No.25712 of 2013, dated 06.09.2017.

2. The facts that forms the back drop for the filing of the review petition is founded on his allegations in the writ petition and the order passed therein. They may be briefly stated:

- The petitioner, claiming himself to be the resident of Sengaligoundanur, Marurupatti Post, Namakkal Taluk, had approached this Court with the PIL, alleging that the property in S.No.14, is a pond, and has been classified in the revenue records as '*kuttai-poromboke*' denoting that it is a water body a government land, that the private respondents (respondents 5 to 7)

have encroached the banks of the said pond and have grown up varieties of trees without obtaining any sanction in law.

- Earlier, the aforesaid private respondents had filed O.S.No.122 of 2003 on the file of the Additional District Munsif Court, Namakkal, seeking a decree of injunction against the State of Tamil Nadu and its officials (respondents 2 to 4 herein) on the ground that the property in S.F.No:14 belonged to them. This came to be dismissed on merit on 28.02.2005. Subsequently, the private respondents again laid a suit in O.S.No.181 of 2005 praying for a declaration of their title over the same property and also for other ancillary relief of injunction. In this suit, they did not disclose about O.S.No.122 of 2003 that they had already filed and lost. Subsequently, O.S.No.181 of 2005 came to be decreed.
- Inasmuch as the property in S.No.14 was classified as '*kuttai-poromboke*' in the revenue records, the decree in O.S.No.181 of 2005 was non-est in law, more so, when the private respondents did not disclose the earlier judgment and decree passed in O.S.No.122 of 2003.
- The encroachment made by the private respondents has become a cause for concern for all the villagers, that the petitioner petitioned the authorities, which ultimately resulted in the Block Development

Officer requesting the Panchayat President to fix the date for removal of the encroachment. As nothing happened thereafter, the petitioner again sent a representation to remove the encroachment of the private respondents, and as this did not evoke any action, he moved this Court for issuing Writ of Mandamus.

3. The allegation of the petitioner that the property in S.F.No:14 is a water body is denied by the private respondents and they asserted title to the property. This Court has taken into consideration the judgment and decree in O.S.No.181 of 2005, and has held that inasmuch as the civil court has declared private respondents' title to the property, the same cannot be interfered with in the writ jurisdiction, and kept open the option which the petitioner might avail in common law, if he so desires.

4. The crux of the review petition now filed before this Court, again makes identical allegation of the same set of facts founded on non-disclosure of O.S.No.122 of 2003 in the subsequent suit in O.S.No.181 of 2005, and proceeded to allege that no regularisation of encroachment made in the water body can be made and relied on the authority in **T.K.Shanmugam v. The State of Tamil Nadu** [2015 WLR 1029(FB)].

5. Counters were filed and counsel on rival sides were heard.

6. Mr.Sriram, learned counsel for the review petitioner has raised two

points that:

- a) The private respondents have played fraud on Court in obtaining a decree for declaration of title in O.S.No.181 of 2005 by not disclosing the earlier suit and its outcome in O.S.No.122 of 2003.
- b) Inasmuch as the property in S.No.14 is classified in the revenue records as water body (kuttai-poromboke), the aforesaid decree will not come to rescue the private respondents. Further, no civil suits will also lie.

7. Mr.S.R.Rajagopalan, learned Additional Advocate General appearing for the official respondents would submit that challenging the decree in O.S.No.181 of 2005, the Government has preferred an application with a delay of about 2000 days and the First Appellate Court has dismissed the application for filing the condonation of delay and efforts are afoot to prefer revision against the said order.

8. The learned counsel for the private respondents on his part submitted that a wrong classification of a property in the revenue records will not affect the title of the property in view of the ratio of the decision reported in **(1971) 1 MLJ 191**, and inasmuch as a title to the property in question has already been declared in O.S.No.181 of 2005, it is not given to the petitioner to harp on an argument founded on revenue classification of the property any longer. He further argued that power of review can be exercised only in cases where there is an error apparent on the face of the

order, or in cases where any new material facts or evidence, which came within the knowledge of the party seeking review of an order and they could not know and hence produce despite due diligence when the writ petition was heard. Reliance was placed on the authority in ***The Managing Director, Hindustan Photo Films Co., Ltd. Vs. H.B.Vinoba and others*** [1999 (1) CTC 30]. In the instant case, no new facts or evidence are made available, as to take away the effect of the decree of the civil Court in O.S.No.181 of 2005.

9. On a careful evaluation of the rival submissions, this Court considers that, so far as the effect of the decree in O.S.No.181 of 2005 is concerned, till it is set aside in the manner known to law, it may have to be respected. And, if the submissions of the counsel for the official respondents were to be trusted, then they are only in the process of preferring a revision, which in our system has to be decided by the Court concerned. So far as other ground for review is concerned, the facts on the basis of which the arguments are now advanced by the review petitioner has already been considered by this Court and he is not able to indicate any error apparent on the face of the record to warrant a review, nor could he able to produce any new fact or evidence earlier which he could not produce despite his due diligence that may warrant a review.

10. In the result, this Court does not find any merit in this petition and accordingly, this Review Petition is dismissed. No costs.

[M.S.N.J.,] [N.S.S.J.,]

15.11.2018

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Internet : Yes

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M.SATHYANARAYANAN, J.,

and

N.SESHASAYEE, J.,



Pre-delivery order in
Review Application No.90 of 2018

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