

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.08.2018

Pronounced on : 05.10.2018

CORAM**THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM**

REV.Appln.No.190 of 2018
in
S.A.No.1658 of 2000

1. Pandarinathan
 2.A.Muthukrishnan
 3. Kannamal
 4.Saroja
 5.Seethalakshmi(deceased) ... Petitioners/Respondents

Vs.

1. Ramasamy
 2.Varalakshmi
 3.Selvalakshmi
 4.Rajeswari
 5.Murali
 (R3 to R5 declared as majors and their mother
 and guardian Varalakshmi (R2) discharged
 from guardianship vide court order dated
 03.07.2018 made in CMP.No.11276/2018) ..Respondents/Appellants

PRAYER: Review Application filed under Section 151 CPC to set aside the Judgment and Decree made in S.A.No.1658 of 2000 and to confirm the decree and judgment of the first appellate court passed in A.S.No.3 of 1999 on the file of the Additional District Court.

For Petitioners

: Mr.P.Jagadeesan
for M/s.S.Sivakumar

For Respondent Nos.1,3 to 5

: Mr.A.Muruganandam

ORDER

This review application has been filed by the respondents in S.A.No.1658 of 2000 to review the judgment and decree passed by the Hon'ble Ms.Justice K.B.K.Vasuki in S.A.No.1658 of 2000 dated 07.08.2015. Since the Hon'ble Ms.Justice K.B.K.Vasuki retired, this review application has been posted before me.

2.The brief facts are as follows:

One Rukmaniammal had filed a suit in O.S.No.76 of 1988 on the file of the Sub-Judge, Ariyalur against one Ramasamy, Vijayaraghavan, Andalammal and others to declare the settlement deed dated 08.03.1985 executed by the said Rukmaniammal in favour of the said Ramasamy and Vijayaraghavan on the ground of fraud, misrepresentation and undue influence. The said Ramasamy and Vijayaraghavan have filed a suit in O.S.No.58 of 1990 on the file of the Sub-Judge, Ariyalur against one Pandarinathan, Madhavan and Muthukrishnan to declare their title over the suit property on the basis of the settlement deed dated 08.03.1985 executed by the said Rukmaniammal and for consequential permanent injunction or alternatively for recovery of possession with mesne profits. The said Andalammal had filed a suit in O.S.No.59 of 1990 on the file of the Sub-Judge, Ariyalur against one Jayalakshmi and Rukmaniammal for permanent injunction restraining them from alienating or encumbering the suit properties till the properties are partitioned by

metes and bounds. One more suit filed along with the aforesaid three suits is O.S.No.57 of 1990 by one Govindammal against the said Ramasamy, Vijayaraghavan, Advocate Receiver and others for declaring her right over the suit property and for permanent injunction.

3. The properties which are the subject matter of the four suits originally belonged to one Krishnan and the plaintiffs and the defendants in all the four suits are his male and female descendants. All the four suits were tried together and disposed of by a common judgment dated 26.02.1998. The trial court has found that the settlement deed dated 08.03.1985 (Ex.A3) is a valid document. It also found that the partition arrangement (Ex.B6) was not true and enforceable and not binding on either Rukmaniammal or Ramasamy or Vijayaraghavan and as such Govindammal/plaintiff in O.S.No.57 of 1990 was not entitled to claim title over the property. It also found that the power of attorney (Ex.B5) which was said to have been executed in favour of Pandarinathan and Madhavan was not proved and the same was not binding on either Andalammal or on Varalakshmi. It also found that Pandarinathan and Madhavan have no right over the property. It also found that the said Muthukrishnan did not prove Ex.B16 Will. Accordingly, the trial court has dismissed the suits in O.S.Nos.76 of 1988 and 57 of 1990 and decreed the suits in O.S.Nos.58 and 59 of 1990.

4. The Aggrieved parties preferred A.S.Nos.2 to 5 of 1999 before the Additional District Judge, Perambalur. A.S.No.2 of 1999 was filed by the second plaintiff-Muthukrishnan against the dismissal of O.S.No.76 of 1988. A.S.No.3 of 1999 was filed by the defendants 1 to 3- Pandarinathan, Madhavan and Muthukrishnan against the judgment and decree of declaration and permanent injunction granted in O.S.No.58 of 1990. A.S.No.4 of 1999 was filed by the defendants 3 and 4- Pandarinathan and Madhavan against the decree granted in O.S.No.59 of 1990. A.S.No.5 of 1999 was filed by the plaintiff-Govindammal against the dismissal of the suit in O.S.No.57 of 1990.

5. The learned Additional District Judge by the common judgment dated 31.01.2000 has partly allowed A.S.No.2 of 1999 and declared that Ex.A3 settlement deed dated 08.03.1985 is a forged document and partly dismissed the appeal by dismissing the suit in O.S.No.76 of 1988 on the ground of limitation. He has allowed A.S.Nos.3 and 4 of 1999 and consequently dismissed the suit in O.S.Nos.58 and 59 of 1990. He has dismissed A.S.No.5 of 1999 confirming the judgment and decree passed in O.S.No.57 of 1990.

6. Aggrieved against the judgment and decree passed by the Additional District Judge in A.S.Nos.2 to 4 of 1999, second appeal Nos.1658 to 1660 of 2000 have been filed. As against the dismissal of

A.S.No.5 of 1999, no second appeal has been filed.

7. At the time of admitting the above second appeals, this court has formulated the following substantial questions of law:

S.A.No.1658 of 2000

“ 1. Whether the lower appellate court is right in setting aside the findings of the trial court that on the evidence available on record the deed of settlement was genuine and the plaintiffs got absolute title and are entitled to the decree as prayed for.

2. Whether the deed of settlement which has already conferred vested right to the plaintiffs can be held to be not genuine by reason of a subsequent will alleged to have been executed by the settlor.”

S.A.No.1659 of 2000

“1. Whether the lower appellate court was right in partly allowing the appeal, having held that the suit is barred by limitation and the suit having been dismissed on that ground.

2. Whether the findings on the deed of settlement arrived at by the trial court can be set aside in appeal when the appellate court agrees that the suit is barred by limitation.”

S.A.No.1660 of 2000:

“Whether the lower appellate court is right in refusing permanent injunction on the ground that the plaintiffs should have asked for partition having held that the defendants have no absolute right in the properties.”

8. During the course of arguments, the following additional substantial questions of law were formulated:

“1. Whether the provisions of the Hindu Law of Inheritance (Amendment) Act II of 1929 is applicable to the facts of the present cases.

2. Whether the female heirs of both the sons of the original owner/Krishnan by names Abbye Chettiar and Govindasamy Chettiar or the 2nd wife of his grand son by name Krishnasamy through one of the sons acquired any right over the property by virtue of Act II of 1929 and Hindu Women's Rights to Property Act, 1937 and Hindu Succession Act, 1956.”

9. This court by the common judgment dated 07.08.2015 has disposed of all the above three second appeals. As far as S.A.No.1659 of 2000 arising out of O.S.No.76 of 1988 is concerned, this court has held that no independent second appeal can be filed against the findings and accordingly, dismissed the S.A.No.1659 of 2000.

10. As far as S.A.No.1660 of 2000 is concerned, the same was filed by the plaintiffs against the rejection of the suit reliefs claimed in O.S.No.59 of 1990. This court has held that the first appellate court was of the view that any alienation or encumbrance created by the defendants 3 and 4/Pandar Nathan or Madhavan on their own account will be without any legal right and the same is not binding on the rightful owners and on the basis of such findings, the first appellate court has set aside the

decree of injunction granted by the trial court and dismissed the suit in O.S.No.59 of 1990. This court has held that since the factual finding rendered by the lower appellate court is based on evidence, this court does not want to interfere in the said findings. Accordingly, S.A.No.1660 of 2000 was also dismissed.

11. As far as S.A.No.1658 of 2000 is concerned, the said second appeal was arising out of the suit in O.S.No.58 of 1990, this court has held that the plaintiffs in that suit viz., Ramasamy and Varalakshmi are entitled to preliminary decree for partition and accordingly, decreed the suit in O.S.No.58 of 1990 by passing preliminary decree for equal shares in favour of Ramasamy and Varalakshmi in respect of the suit properties and accordingly disposed of S.A.No.1658 of 2000. Aggrieved by the said findings and passing of preliminary decree for partition, the first respondent/first defendant viz, Pandarinathan has filed the present review application.

12. Heard Mr. P.Jagadeesan for M/s.S.Sivakumar, learned counsel for the petitioners and Mr.A.Muruganandam, learned counsel for the respondent Nos.1 3 to 5.

13. Learned counsel for the petitioners has submitted that the respondents herein have filed a suit in O.S.No.58 of 1990 on the file of

the Sub-Court, Ariyalur claiming title over the suit property on the basis of the settlement deed dated 08.03.1985 (Ex.A3) said to have been executed by one Rukmaniammal who is the second wife of one Krishnasamy. He further submitted that the defendants therein have disputed the above settlement deed as it was obtained by playing fraud, misrepresentation, undue influence and by breach of trust. The trial court has found that the settlement deed (Ex.A3) is a valid document and decreed the suit in favour of the plaintiffs. As against the same, the defendants have preferred an appeal in A.S.No.3 of 1999 on the file of the Additional District Judge, Perambalur and the learned Additional District Judge, has allowed the said appeal and dismissed the suit in O.S.No.58 of 1990 holding that the settlement deed is void abinitio. As against the same, the plaintiffs have filed a second appeal in S.A.No.1658 of 2000. He further submitted that both the plaintiffs and the defendants have undisputedly admitted the title of Rukmaniammal in respect of the suit properties and therefore, no necessity arises to question the title of Rukmaniammal over the suit property, but contrary to the same, this court has formulated the additional substantial questions of law that during the course of arguments, as to the applicability of the Hindu Law of Inheritance (Amended) Act II of 1929), Hindu Women's Rights to Property Act, 1937) and Hindu Succession Act, 1956). He further submitted that this court has formulated the above additional substantial questions of law against the law and it is error apparent on the face of the

records. He further submitted that it is nobody's case that the said Rukmaniammal is not having title over the suit property and both the parties claimed right over the suit property only through the said Rukmaniammal and that being so, this court ought not to have framed the aforesaid additional substantial questions of law.

14. Learned counsel for the petitioners has further submitted that this court in paragraph Nos.35 and 36 of the judgment has held that Krishnasamy who is the son of Govindasamy Chettiar born through the first wife viz., Kannammal alone is entitled to succeed to the entire estate left behind by Govindasamy Chettiar and after holding so, it has further held that the said Krishnasamy died in the year 1983 leaving behind his two wives viz, Jayalakshmi and Rukmaniammal without any issues. It was further held that on the date of his death, 1956 Act was in force and as per the said Act, both the widows shall come under clause-I heirs and they together shall get one share. However, in order to decide the right of junior wife viz., Rukmaniammal, the date of marriage between Krishnasamy and Rukmaniammal is more relevant and in the absence of any particulars to hold the marriage between them are void or voidable, the second wife Rukmaniammal cannot be held to have acquired any right along with the senior wife Jayalakshmi. He further submitted that after holding so, without giving an opportunity to the petitioners herein to adduce evidence with regard to the date of marriage between

Krishnasamy and Rukmaniammal, this court has straight away decided that the said Rukmaniammal is not having any right over the property of Krishnasamy. This is also an error apparent on the face of the record.

15. The learned counsel by the petitioners has further submitted that the said Rukmaniammal had executed a registered Will dated 29.04.1986 in favour of the second petitioner herein and the first appellate court found that the said Will was duly proved and that being so, this court ought not to have granted a preliminary decree for partition in favour of the respondents 1 and 2 herein without any prayer for partition and the same is also an error apparent on the face of the record and therefore, the aforesaid findings of this court have to be reviewed.

16. The learned counsel for the respondents, on the contrary has contended that this court during the course of arguments, by exercising the power under the proviso to Section 100 of CPC has formulated the additional substantial questions of law. It cannot be said that exercising the said power is an error apparent on the face of the record. He further submitted that after elaborate discussion, this court has held that irrespective of the right if any of Rukmaniammal over the property of Krishnasamy, the right of the other widow Jayalakshmi to succeed to the property of her deceased husband cannot be denied. After holding so, it has further held that since the said Jayalakshmi died issueless, her only

legal heir to succeed to the estate was Andalammal who was Krishnasamy's sister by half blood and on her death, her legal heirs are entitled to succeed to the property. He further submitted that the said findings also cannot be said as error apparent on the face of the record. He further submitted that if the petitioners feel that the aforesaid findings are erroneous findings, the petitioners ought to have filed an appeal before the Hon'ble Supreme Court and instead of doing so, they cannot challenge those findings by filing review application. He further submitted that this court cannot sit in appeal over the aforesaid findings and therefore, he prayed to dismiss this review application.

17. Having heard learned counsel for the petitioners and the respondents and looking to the relief claimed, it will be necessary to ascertain that what is the review jurisdiction of the court under Section 114 and Order 47 of the Civil Procedure Code and whether the prayer asked for would fall within the scope of the review as envisaged by the Civil Procedure Code.

18. In the case of **Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhary, MANU/SC/0098/1995:AIR 1995 SC 455**, the Hon'ble Supreme Court has observed in paragraph No.8 as under:

“8. It is well-settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, C.P.C. In connection

with, the limitation of the powers of the Court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleshwar Sharma v. Aribam Pishak Sharma and Ors. MANU/SC/0058/1978 : 1979CriL J908 , speaking through Chinnappa Reddy, J., has made the following pertinent observations :

“It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent mis-carriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.”

“Now, it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere

looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale*, MANU/SC/0169/1959 : AIR 1960 SC 137, wherein, K.C. Das. Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

"An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ." In other decision in the matter of *Ajit Kumar Rath v. State of Orissa and Ors.*, as reported in MANU/SC/0705/1999 : 1999 (9) SCC 596, observed in Paras 30 and 31 as under :-

"30. The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a Court under Section 114 read with Order 47 C.P.C. The power is not absolute and is hedged in by restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence, which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say,

the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47, Rule 1 means a reason sufficiently analogous to those specified in the rule.

31. *Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."*

19. Again in one more decision in the matter of ***parsion Devi and Others Vs. Sumitri Devi and Others, MANU/SC/1360/1997: 1998 (1) CTC 25***, the Hon'ble Supreme Court has observed in paragraph No.9 as follows:-

"9. *Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule I CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".*

20. From the above, it is well settled that the scope of the review is very limited and the review must be confirmed strictly only to the error

apparent on the face of record. An error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning. Keeping in view the aforesaid settle petition of law, we will see the merits of this review petition.

21. The learned Single Judge (K.B.K.Vasuki.J) relying upon the decision of the Hon'ble Supreme Court in **Feteah Bibi etc., Vs. Charan Dass, AIR SC 789** in paragraph Nos.33 and 34 has held as follows:

"33.This Court is bound by the principles laid down by the Apex Court as stated above. This Court can have no quarrel with the legal proposition laid down by the Apex Court that the Act No.II of 1929 applies not only to the case of a Hindu male dying intestate on or after February 21, 1929, but also to the case of such a male dying intestate before that date if he was succeeded by a female heir who died after that date and succession in such cases to the estate of the last Hindu male, who died intestate did not open until the death of the life estate holder and during the lifetime of life estate holder, the reversioners in Hindu law have no vested interest in the estate and they have a mere spes successionis. The point of time for the applicability of the Act is, when the succession opens viz., when the life estate terminates. Further, as far as the Hindu Law of Inheritance (Amendment) Act, (Act No.II of 1929) is concerned, the same is as per the interpretation of the Apex court in the decision reported in AIR 1970 SC 789 (Fateh Bibi etc. v. Charan Dass), applicable only when the propositus is a male and the property in respect of 29 which it is sought to be applied is the property of

male not held in co-parcenary and the property not disposed of by Will, but is his separate property.

34. Insofar as the property of the original owner Krishnan is concerned, the same is both the courts below, held to be ancestral in nature and on his death, it was in the hands of Abbye and Govindasamy Chettiar as co-parcenary. If that is so, Act II of 1929 is as per the ratio laid down by the Apex Court not applicable to the ancestral property held by Abbye Chettiar and Govindasamy Chettiar. That being the legal and factual position, the contention raised on the side of the contesting respondent for applying the order of succession under Act II of 1929 is liable to be rejected and the finding of the court below that on the date of death of Abbye Chettiar, the entire estate was succeeded by Govindasamy Chettiar and his only son Krishnasamy through his predeceased wife Kannammal, need not be interfered with and the first additional substantial question of law is accordingly answered against the first respondent. “

22. After holding so, the learned Single Judge (K.B.K.Vasuki.J), further relied upon Full Bench decision of this court in ***Umayal Achi Vs. Lakshmi Achi, 1945 (1) MLJ 108*** and observed in paragraph Nos.35, 36 and 37 as follows:

“35. The fact which remains undisputed is that Govindasamy Chettiar died on 13.12.1944, leaving behind him his only son Krishnasamy through his predeceased first wife Kannammal and his second wife Ammaniammal and his daughter Andalammal through Ammaniammal. It is true that the Hindu Women's Right to Property Act, 1937 confers right to property

on Hindu women, but the Full Bench of our High Court while testing the validity of such Act in Umayal Achi case in 1945 (1) MLJ 108 held therein that the Act would not apply to agricultural lands. The issue relating to non-applicability of the 1937 Act to agricultural land was resolved only by Amendment Act 26/1947 and by virtue of such Amendment Act, the Act 1937 was made applicable to agricultural lands with effect from 26.11.1946 i.e., effective date of Amendment Act. In that event, the finding of the lower appellate court that the only son of Govindasamy chettiar through his first wife Kannammal i.e., Krishnasamy and the second wife of Govindasamy Chettiar i.e., Ammaniammal on the death of Govindasamy Chettiar in 1944, became entitled to equal $\frac{1}{2}$ share and the share belonging to Ammaniammal, on her death in 1977 was succeeded either by Krishnasamy and Andalammal or Andalammal solely, is legally unsustainable. On the other hand, Krishnasamy/son was the only heir entitled to succeed to the entire estate left behind by Govindasamy Chettiar.

36.As far as the male heir Krishnasamy is concerned, he died in 1983 leaving behind his two wives, by names Jayalakshmi and Rukmani without any issues. It may be true that on the date of his death, 1956 Act was in force. The combined reading of Sections 8 and 10 of the Hindu Succession Act would say that if there are more than one widows, both the widows shall come under class I heirs and they together shall get one share. However, in order to decide the right of Junior wife Rukmani along with senior wife Jayalakshmi, in the property of Krishnasamy the date of marriage between Krishnasamy and Rukmani is more relevant and in the absence of any particulars to hold the marriage between them as void or voidable, the second wife Rukmani cannot be hld

to have acquired any right along with Jayalakshmi over the property of Krishnasamy. Only in the event of any finding on this aspect, the issue whether both Jayalakshmi and Rukmani were entitled to equal share in the property of Krishnasamy or it is only Jayalakshmi, who was entitled to get the entire share of Krishnasamy, can be decided. Only when Rukmani is held to have any right over the property of Krishnasamy, the question of going into her right to execute any settlement deed in favour of Ramasamy and deceased Vijayaraghavan and the validity of settlement deed does arise herein.

37. Irrespective of the right if any of Rukmaniammal over the property of Krishnasamy, the right of other widow Jayalakshmi to succeed to the property of her deceased husband cannot be denied. The fact that cannot be disputed is that on the death of Jayalakshmi, the only legal heir to succeed to the estate was only Andalmmal, who was Krishnasamy's sister by half blood. If that is so, on the date of death Andalammal in 1990, the son, daughter and husband of Andalmmal were under Section 15 of Hindu Succession Act 1956 firstly entitled to succeed to the property and the second additional substantial question of law is accordingly answered.”

23. After holding so, the learned Single Judge (K.B.K.Vasuki.J), in paragraph Nos.38, 39 and 40 has held as follows:

38.As far as the daughter Varalakshmi is concerned, while she was impleaded in the suit filed by others in her individual capacity, she was impleaded in O.S.58/1990 as

one of the legal heirs of Vijayaraghavan, who was one of the settlees under Ex.A3. Whereas, Muthukrishnan, who was the husband of Andalammal, was not impleaded in any of the suits, as such, the question of going into the validity of execution of Ex.A3 settlement deed purportedly executed by Rukmaniammal in favour of Ramasamy and deceased Vijayaraghavan cannot be gone into, in his absence. Further, as per the evidence of Andalammal as PW1, her husband Muthukrishnan died during 1971. In that event, the property belonging to Andalammal shall devolve upon both her children Ramasamy and Varalakshmi and the claim of Ramasamy and legal heirs of Vijayaraghavan for any title over the property on the strength of Ex.A3 settlement deed executed by Rukmaniammal is legally not maintainable and the question of going into the valid execution of the same by Rukmaniammal does not arise herein. The substantial questions of law 1 and 2 raised in SA.No.1658/2000 are accordingly answered against the plaintiffs.

39. The remedy if any available to Ramasamy is to seek partition in respect of entire estate between himself and his sister Varalakshmi. As both the parties, who are entitled to the suit property, are now available before this court and having regard to the pendency of the litigation for longer period, both Ramasamy and Varalakshmi can be held entitled to preliminary decree for partition in respect of the suit properties in OS.No.58/1990.

40.To sum up, after the death of the original owner Krishnan,his sons Abbyee Chettiar and Govindasamy Chettiar were entitled to succeed the properties belonging to their father as co-sharers and after the death of Abbyee Chettiar, the entire family properties being ancestral

properties belonging to Krishnan devolved upon his other son Govindasamy Chettiar by survivorship and on the death of Govindasamy, his only son Krishnasamy succeeded to the same and after the death of Krishnasamy and his widow or widows, his sister by half blood Andalammal, who was the daughter of Govindasamy through second wife Ammaniammal succeeded to the same as class II heir of Krishnasamy and on the death of Andalammal, her son and daughter Ramasamy and Varalakshmi are entitled to get equal share in the same. Accordingly, both Ramasamy and Varalakshmi are entitled to preliminary decree for partition in their suit OS.58/1990 in respect of the suit properties. In view of the same, the judgment and decree made in AS.2/1999 and 4/1999 arising out of O.S.76/1988 and 59/1990 call for no interference by this court."

24. From the reading of the aforesaid findings, it cannot be said that those findings are error apparent on the face of the record. The learned Single Judge (K.B.K.Vasuki) took the aforesaid views after elaborate discussions. A review would not be permissible on the ground that the decision is erroneous on merits. The points now raised by the petitioners have to be raised before the appellate court and therefore, this court is of the view that this review application is not maintainable.

In the result, this application is dismissed. No costs.

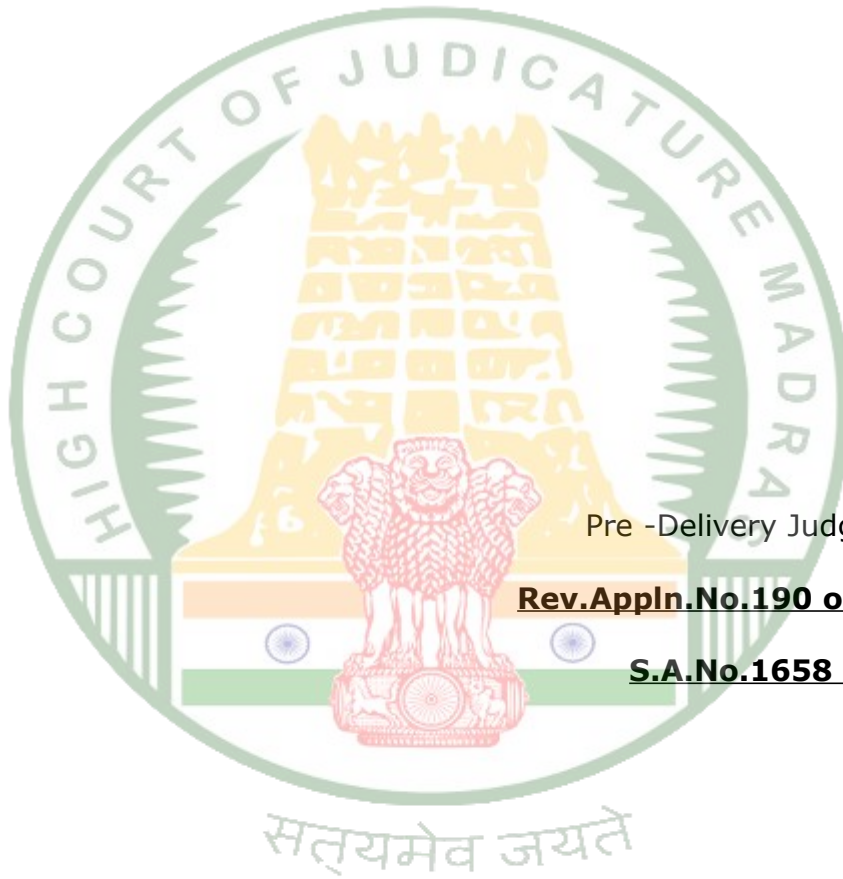
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Index :Yes/No

Speaking / Non-speaking order

05.10.2018

P.RAJAMANICKAM., J.
gv



Pre -Delivery Judgment in

Rev.Appln.No.190 of 2018
in
S.A.No.1658 of 2000

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