

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2018

CORAM

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Review Application No.264 of 2018
in C.R.P(NPD).No.3531 of 2013
and C.M.P.No.19756 of 2018

E.Maheswari

..Petitioner

Vs.

1.Rajesh Lakshmi Chand

2.V.S.Velusamy Gounder

3.M.Shanthi Rani

4.M.Sivakami

..Respondents

PRAYER: Review Application filed under Order 47 Rule 1 read with Section 114 of C.P.C, to review the order dated 27.02.2018 made in C.R.P(NPD).No.3531 of 2013, on the file of this Court.

For Petitioner

: Mr.Sathish Parasaran,
Senior Counsel,
for Mr.R.Bharath Kumar

For R1

: Mr.T.V.Ramanujam,
Senior Counsel,
for Mr.C.Jagadish

For R2

: Mr.S.Kumaradevan

ORDER

The present Review Application is filed to review the order dated 27.02.2018 made in C.R.P(NPD).No.3531 of 2013, on the file of this Court.

2.Mr.Sathish Parasaran, learned Senior Counsel appearing for the review petitioner contended that the 1st respondent has filed Execution Petition for execution of sale deed and E.P is not for possession of the property as per the decree in the suit filed by the 1st respondent, for specific performance. Unless the sale deed is executed, the agreement holder does not acquire any right over the property. The 1st respondent has not deposited the amount as directed by the Court. There is an error in the order by directly allotting a share in favour of the 1st respondent, who is a third party to the decree for partition and only the Trial Court can allot share in the suit for partition. The question of collusion can be decided only by appreciating the evidence and this Court ought to have ordered re-trial by impleading the 1st respondent as party to the suit for partition. The review petitioner and respondents 3 and 4 by amendment to the Hindu Succession Act have acquired share in the suit property and this Court has committed an error in holding that final decree is a nullity when review petitioner and respondents 3 and 4 have become co-parcenors along with 2nd

respondent.

3.The learned Senior Counsel for the review petitioner further contended that the 1st respondent deposited money, pending suit and he gets right only to preserve the property and cannot ask for specific portion of the property. The 2nd respondent did not have absolute right over 86 cents and he is entitled to only 1/4th share and decree obtained by the 1st respondent can be executed only with regard to 1/4th share. In support of his contention, the relied on the judgments reported in:

(i) 2012 1 SCC 656 [Suraj Lamp and Industries Private Ltd., through Director Vs. State of Haryana and another]:

"16. Section 54 of the TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This Court in Narandas Karsondas V. S.A.Kamtam (2) observed:
(SCC PP. 254-55, paras 32-33 & 37)

"32. A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. [See Ram Baran Prasad V. Ram Mohit Hazra (3)] The fiduciary character of the personal obligation created by a contract for sale is recognized

in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein.

37.....that only on execution of conveyance, ownership passes from on party to another....."

(ii) MANU/BH/0141/1916 [Musammat Bibi Wahidunnissa Vs. Babu Dip Narain Pershad]:

"2.....I understand that a preliminary decree in a partition suit has existence independent of the final decree and the final decree really is dependent upon and subordinate to the preliminary decree. In my opinion, a preliminary decree retains its force as such even after the passing of the final decree. A preliminary decree is not extinct after the passing of the final decree and the final decree instead of extinguishing a preliminary decree gives effect to it. Agreeing with the observations of His Lordship the' Chief Justice I am also of opinion that the objection should be overruled."

4.Per contra, the learned Senior Counsel appearing for the respondents contended that the learned Senior Counsel for the review

petitioner is re-arguing the matter on merits, which is not permissible in a Review Application. The review petitioner filed S.L.P.(Civil) No.12498 of 2013, challenging the order now sought to be reviewed. The Hon'ble Apex Court dismissed the S.L.P.(Civil) No.12498 of 2013 on 16.07.2018, upholding the order passed by this Court in the Civil Revision stating that they are not inclined to interfere with the order passed by this Court. The Hon'ble Apex Court referring to the submissions of the counsel for the review petitioner that petitioner wants to file a Review Application with regard to findings of this Court that in view of the nullity of preliminary decree, the final decree is also nullity, has stated that the petitioner is at liberty to file the Review Application. The present Review Application is not maintainable in view of the dismissal of the Special Leave Petition on merits. The contention of the learned Senior Counsel for the review petitioner that as per Section 12 (3) of the Specific Relief Act, the 1st respondent can execute the decree only in respect of 1/4th of 86 cents is without merits, as this Court has considered the submission of the counsel for the review petitioner with regard to Section 12 (3) of the Specific Relief Act in the Civil Revision Petition itself and rejected the said contention.

5.The learned counsel for the review petitioner while arguing the Civil Revision Petition has stated that the petitioner is not seeking any

specific portion in the larger extent and only the Trial Court has allotted 86 cents, being the subject matter of the specific relief suit to the review petitioner. In view of the same, this Court directed the Trial Court to consider the final decree application afresh and allot 86 cents to the 2nd respondent, so that the 1st respondent can take possession. Hence, the review petitioner cannot re-argue the very same point, as there is no error in the order of this Court, which is sought to be reviewed. The learned Senior Counsel for the 1st respondent in support of his contention, relied on the judgment reported in **2017 4 SCC 692 [Sasi (dead) through legal representatives Vs. Aravindakshan Nair and others]**:

"6.The grounds enumerated therein are specific. The principles for interference in exercise of review jurisdiction are well settled. The Court passing the order is entitled to review the order, if any of the grounds specified in the aforesaid provision are satisfied.

7.In Thungabhadra Industries Ltd., Vs. State of A.P, AIR 1964 SC 1372, the Court while dealing with the scope of review had opined: (AIR p.1377, para 11)

"11.What, however, we are now concerned with is whether the statement in the order of September 1959 that the

case did not involve any substantial question of law is an "error apparent on the face of the record". The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record", for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."

8. In Parsion Devi V. Sumitri Devi Parsion Devi Vs. Sumitri Devi, 1997 8 SCC 715, the Court after referring to Thungabhadra Industries Ltd., Meera Bhanja (Smt) V. Nirmala Kumari Choudhury (Smt). Meera Bhanja (Smt) V. Nirmala Kumari Choudhury (Smt)., 1995 1 SCC 170 and Aribam Tuleshwar Sharma V. Aribam Pishak Sharma Aribam Tuleshwar Sharma V. Aribam Pishak Sharma, 1979 4 SCC 389, held thus:

"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 1 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'".

9. The aforesaid authorities clearly spell out the nature, scope and ambit of power to be exercised. The error has to be self evident and is not to be found out by a process of reasoning. We have adverted to the aforesaid aspects only to highlight the nature of review proceedings."

6. Heard the learned Senior Counsel for the petitioner as well as the respondents 1 and 2 and perused the materials available on record.

7. From the order sought to be reviewed, it is seen that all the points raised by the review petitioner now were considered by this Court and the order impugned has been passed on merits. In view of the same, the submission of the review petitioner now made on merits is not maintainable as the review petitioner is re-arguing the matter. As far as the finding with regard to final decree is concerned, this Court has not decided and rejected the share of the review petitioner and respondents 3 and 4. On the other hand, this Court has set aside the final decree and impleaded the 1st respondent as party to the final decree proceedings and directed the Trial Court to allot 86 cents, which is subject matter of the suit filed by the 1st respondent for specific performance, to the 2nd respondent, so that the 1st respondent can take possession of the same, as per the decree of specific performance.

8. It is well settled that the Review Application can be entertained only when there is an error apparent on the face of the record. The error must be self-evident and is not to be found out by a process of reasoning. The paragraphs 8 and 9 of the judgment of the Hon'ble Apex Court reported in **2017 4 SCC 692** referred to above, relied on by the learned Senior Counsel for the 1st respondent is squarely

applicable to the facts of the present case. There is no error apparent on the face of record in the order of this Court dated 27.02.2018 made in C.R.P(NPD).No.3531 of 2013. Accordingly, the Review Application fails.

9.In the result, the Review Application is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes

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Note: Issue order copy on 04.01.2019



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V.M.VELUMANI, J.,

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