



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.10.2019

PRONOUNCED ON : 31.10.2019

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Rev.Aplc. (MD) .No.73 of 2018

and

C.M.P. (MD) .No.5923 of 2018

in

S.A. (MD) .No.288 of 2006

and

C.M.P(MD)Nos.5920 to 5922 of 2018

in

S.A(MD)Nos.571 and 600 of 2007 and 803 of 2006

and

C.M.P. (MD) .Nos.6174 of 2018, 7683 to 7685 of 2019, 7705 & 7706 of 2019 and 7691, 7692 & 7694 of 2019

in

C.M.P. (MD) .Nos.5920 of 2018

in

S.A. (MD) .Nos.571 of 2007

and

C.M.P. (MD) .Nos.7678, 7681, 7682, 7696 to 7698, 7700 and 7702 of 2019

in

C.M.P. (MD) .No.5921 of 2018

in

S.A. (MD) .No.600 of 2007

and

C.M.P. (MD) .Nos.7688 to 7690 of 2019

in

C.M.P. (MD) .No.5922 of 2018

in

S.A. (MD) .No.803 of 2006

Rev.Aplc (MD) .No.73 of 2018

Mirunalini Ammal (Died)

1.Thulasidasan Nair

2.P.Premnath

... Petitioners / Appellants 2 & 3

Vs.



- 2.Papppathiammal @ Pappu Ammal
- 3.Arunachala Thevar
- 4.S.Kasi Viswanathan
- 5.Thirumeni @ Packiyathammal
- 6.Sakthivel Chettiar
- 7.Chandra Leela Browning
- 8.Velaiya
- 9.Esakki (Died)
- 10.Sivasubramanian
- 11.Balasubramanian
- 12.Petchimuthu
- 13.Iyyathurai
- 14.Mayandi Thevar
- 15.Shanmuga Thevar
- 16.Renganathan
- 17.Chitrai
- 18.Paramasivam Chettiar
- 19.Madasamy
- 20.Murugan
- 21.Thangapandi
- 22.Maruthanayagam
- 23.Mookkammal
- 24.Sivasubramanian @ Selvam
- 25.Venkattu
- 26.Murugan
- 27.Kannan
- 28.Vanuvalmalai
- 29.Muthukrishnan
- 30.Selvkumar
- 31.Sivagnanammal
- 32.Avudaittai
- 33.Subbukutti @ Subbammal
- 34.Shanmugavelu
- 35.Murugan
- 36.Velammal
- 37.Thangaraj Nadar
- 38.Vasigara Thilagar

... Respondents/Respondents

(Notices to the respondents 6, 7, 12, 15, 19 to 28 & 37 were dispensed with in the second appeal and hence, notices to them may dispense with.)

PRAYER :- Review Petition has been filed under Order 47 Rule 1 & Section 114 C.P.C. r/w Article 226 of the Constitution of India, praying to set aside the judgment and decree dated 30.04.2015 passed in S.A. (MD) No.288 of 2006.

Prayer in SA(MD). 288/ 2006 :

Second Appeal is filed under Section 100 of Civil Procedure Code, praying this Hon'ble Court against the Judgment and Decree dated 13/12/2005 and made in AS.84/2005 on the file of Principal Sub Judge, Tirunelveli, confirming the Judgment and Decree dated



30/12/2004 made in OS.708/1985 on the file of 1st Addl. District Munsif, Tirunelveli.

For Petitioner : Mr.H.Arumugam
For 1st respondent : Mr.S.HajaMohideen Gisthi
For respondents 4 & 10 : Mr.S.B.Kamalanathan
For 17th respondent : Mr.T.Selvan
For 36th respondent : Mr.T.Balaji
For respondents 3, 4, 5, 8, 10,
11, 13, 29, 30, 31, 32, 33,
34, 35 & 38 : No appearance

C.M.P. (MD) .No.5920 of 2018 in S.A. (MD) .No.571 of 2007:

Thirumeni @ Packiyawathi ... Petitioner / Appellant

Vs.

1.K.Sivasubramanian
2.Pappathiammal @ Pappu Ammal
3.Arunachala Thevar
4.Kasi Viswanathan

(Respondents 2 to 4 are represented by their Power Agent, 1st respondent herein)

5.Sakthivel Chettiar
6.Mirunaliniammal (Died)
7.Thulasidasan Nair
8.Chandraleela Brownin
9.Velaiya
10.Esakki (Died)
11.Sivasubramanian
12.Balasubramanian
13.Petchimuthu
14.Ayyadurai
15.Mayandi Thevar
16.Shanmuga Thevar
17.Renganathan
18.Chitrai
19.Paramasivan Chettiar
20.Madasamy
21.Murugan



23.Marudhanayagam
24.Mookkammal
25.Sivasubramanian @ Selvam
26.Venkat
27.Murugan
28.Kannan
29.Vanamamalai
30.Muthukrishnan
31.Selvkumar
32.Sivagnanammal (Died)
33.Avudaitthai
34.Subbu Kutti @ Subbammal
35.Shanmugavel
36.Murugan
37.Velammal
38.Thangaraj Nadar (Died)
39.Vasigara Thilagar

... Respondents/Respondents

PRAYER : Petition filed under Order 41 Rule 19 C.P.C. r/w Section 151 of C.P.C., praying to restore the appeal by setting aside the judgment and decree dated 30.04.2015 passed in S.A.(MD)No.571 of 2007 and further to admit the same to its file and to rehear the appeal on merits.

Prayer in SA(MD). 571/ 2007 :

Second Appeal is filed under Section 100 of Civil Procedure Code, praying this Hon'ble Court against the Judgment and Decree passed in AS.194/2005 on the file of the Principal Sub Judge, Tirunelveli dated 13/12/2005 confirming the Judgment and Decree dated 30/12/2004 made in OS.708/1985 on the file of 1st Addl. District Munsif Court, Tirunelveli.

For Petitioner : Mr.G.Prabhu Rajadurai,
for Mr.M.P.Senthil

For respondents 4 & 11 : Mr.S.B.Kamalanathan

For 3rd respondent : Mr.A.Arumugam

For respondents 27, 33, 34
35 & 37 : Mr.R.Manimaran

For 32nd respondent : Mr.D.Nallathambi

For 39th respondent : Mr.T.R.Jeyapalam

For respondents 3, 9, 12, 13,
14, 20 to 22, 26, 28, 29, 30,
31 and 36 : No appearance



C.M.P. (MD) .No.5921 of 2018 in S.A. (MD) .No.600 of 2007:

Marudhanayagam

... Petitioner / Appellant

Vs.

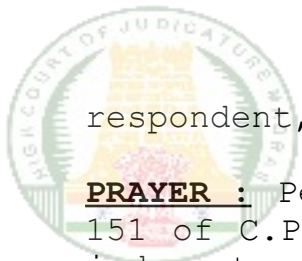
- 1.K.Sivasubramanian
2.Pappathiammal @ Pappu Ammal
3.Arunachala Thevar
4.Kasi Viswanathan

(Respondents 2 to 4 are represented by their Power Agent, 1st respondent herein)

- 5.Thirumeni @ Packiawathi
6.Sakthivel Chettiar
7.Mirunaliniammal (Died)
8.Thulasidasan Nair
9.Chandraleela Brownin
10.Velaiya
11.Esakki (Died)
12.Sivasubramanian
13.Balasubramanian
14.Petchimuthu
15.Ayyadurai
16.Mayandi Thevar
17.Shanmuga Thevar
18.Renganathan
19.Chitrai
20.Paramasivan Chettiar
21.Madasamy
22.Murugan
23.Thankapandi
24.Sivasubramanian @ Selvam (Died)
25.Venkat
26.Murugan
27.Kannan
28.Vanamamalai
29.Muthukrishnan
30.Selvkumar
31.Sivagnanammal (Died)
32.Avudaithai
33.Subbu Kutti @ Subbammal
34.Shanmugavel
35.Murugan
36.Velammal
37.Thangaraj Nadar (Died)
38.Vasigara Thilagar

... Respondents/Respondents

(As per the order dated 05.08.2019, a memo presented by the petitioner before the Court to the effect that the respondents 7, 11, 21 and 31 died and steps not necessary in respect of the 24th



respondent, is recorded)

PRAYER : Petition filed under Order 41 Rule 19 C.P.C. r/w Section 151 of C.P.C., praying to restore the appeal by setting aside the judgment and decree dated 30.04.2015 passed in S.A.(MD)No.600 of 2007 and further to admit the same to its file and to rehear the appeal on merits.

Prayer in SA(MD). 600/ 2007 :

Second Appeal is filed under Section 100 of Civil Procedure Code, praying this Hon'ble Court against the Judgment and Decree dated 13/12/2005 made in AS.75/2005 on the file of the Principal Sub Judge, Tirunelveli confirming the Judgment and Decree dated 30/12/2004 made in OS.708/1985 on the file of 1st Addl. District Munsif Court, Tirunelveli.

For Petitioner : Mr.G.Prabhu Rajadurai,
for Mr.M.P.Senthil

For respondents 1 to 4 : Mr.S.HajaMohideen Gisthi

For respondents 10, 12 & 19 : Mr.S.Balasubramanian

For respondents 13 & 14 : Mr.D.Nallathambi

For 15th respondent : Mr.S.Kumar

For respondents 29 & 30: Mr.T.Kadarkarai

For respondents 34 & 36: Mr.R.Manimaran

For 38th respondent : Mr.T.R.Jeyapalam

For respondents 5, 21, 22,
23, 25, 27, 28, 32, 33 & 35 : No appearance

C.M.P. (MD) .No.5922 of 2018 in S.A. (MD) . No.803 of 2006:

S.Thirumeni @ Bakiawathi ... Petitioner / Appellant

Vs.

- 1.Maruthanayagam (Died)
- 2.Shanmugathevar
- 3.Bakkiathai
- 4.Duraisingh
- 5.Christopher
- 6.Vesigara Thilagar



- 7.Thangaraj (Died)
- 8.Subbulakshmi
- 9.Subbammal
- 10.Mutharasu (Died)
- 11.Sivasubramanian (Died)
- 12.Venkatachalam
- 13.Duraimurugan
- 14.Kannan
- 15.Vanamamalai
- 16.Marudhanayagam
- 17.Petchiammal
- 18.M.Aruna
- 19.M.Annalaxmi
- 20.M.Arunkumar
- 21.Rajeswari
- 22.Jayakanchana Murugeswari
- 23.Amudha Vasugidevi
- 24.Jayalakshmi
- 25.Bhuvaneswari
- 26.Venkatasubramanian (Died)
- 27.Karthikeyan
- 28.Ezhilarasi

... Respondents/Respondents

(As per the order dated 05.08.2019, a memo presented by the petitioner before the Court to the effect that the respondents 1, 11 and 26 died and steps not necessary in respect of the 1st and 11th respondents, is recorded)

PRAYER : Petition filed under Section 5 of the Limitation Act, praying to condone the delay of 101 days in filing a petition to restore the appeal by setting aside the judgment and decree dated 30.04.2015 passed in S.A.(MD)No.803 of 2006 and further to admit the same to its file and to rehear the appeal on merits.

Prayer in SA(MD). 803/ 2006 :

Second Appeal is filed under Section 100 of Civil Procedure Code, praying this Hon'ble Court against the Judgment and Decree dated 27.11.2000 and made in AS.110/1997 on the file of the I Additional Subordinate Judge, Tirunelveli confirming Judgment and Decree dated 21.12.1996 and made in OS.1285/1985 on the file of the Prl.District Munsif, Tirunelveli.

For Petitioner : Mr.G.Venugopal

For 6th respondent : Mr.T.R.Jeyapalam

For respondents 9, 13 & 14 : Mr.Senthoor Pandian

For respondents 12, 15,
17 to 20 : Mr.A.Arumugam



For 16th respondent : Mr.P.Thiagarajan

For respondents 21 to 25,
27 & 28 : Mr.T.R.Balaji

COMMON ORDER

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Review Application (MD).No.73 of 2018 has been filed by the petitioners/appellants praying to review the judgment and decree dated 30.04.2015 passed in S.A.(MD).No.288 of 2006.

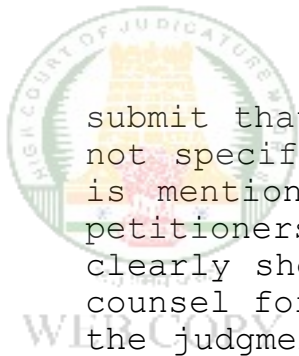
2. C.M.P.(MD).Nos.5920 and 5921 of 2018 in S.A.(MD).Nos.571 and 600 of 2007 respectively have been filed by the petitioners/appellants seeking to restore the above second appeals by setting aside the judgment and decree dated 30.04.2015 and further to admit the same to its file and to rehear the appeals.

3. C.M.P.(MD).No.5922 of 2018 in S.A.(MD).No.803 of 2006 has been filed by the petitioner/appellant seeking to condone the delay of 101 days in filing an application to restore the appeal by setting aside the judgment and decree dated 10.03.2015 and further to admit the same to its file and to rehear the appeal on merits.

4. Though the miscellaneous petitions for impleading the legal heirs of the some of the deceased respondents are pending in the above cases and steps are pending for some of the respondents, considering the submissions of the learned counsel for the contesting respondents that the most of the parties have become octogenarian and they wanted to enjoy the fruits of the decree and that there is also a specific direction by the Hon'ble Supreme Court to dispose of the rehearing and review petitions forthwith and that the question of maintainability of the petitions for hearing of the appeals may be decided first, these petitions were taken up for hearing by consent of both sides.

5. Since the issue involved in these petitions are interrelated to each other, they were heard together at the request of the learned counsel for the parties and are being disposed of by way of this common order.

6. The learned counsel for the petitioners/appellants in C.M.P.(MD).Nos.5920 and 5921 of 2018 submitted that S.A.(MD).Nos.288 of 2006 and 571 and 600 of 2007 were listed for final hearing on 23.09.2014 and subsequently, it was adjourned on various dates. However, the appeals were not able to be heard for the specific reason that the services were not completed and further LR applications were pending. But, a learned Single Judge of this Court has reserved the judgment of these appeals, without even hearing the learned counsel for the petitioners/appellants and pronounced the common judgment on 30.04.2015. He would further



submit that even in the said common judgment, the learned Judge has not specified that arguments were advanced by the counsels, but it is mentioned in the judgment as if the learned counsels for the petitioners/appellants have raised only the grounds, which would clearly show that even without hearing the arguments of the learned counsel for the petitioners/appellants, the learned Judge has passed the judgment. As such, the common judgment, which has been passed in the appeals even though it is on merits, it has to be construed only as a dismissal of the appeals on default/non prosecution. Therefore, the applications filed under Order 41 Rule 19 C.P.C. is very well maintainable. Therefore, these petitions may be allowed and the parties may be given a chance for arguing the appeal on merits.

7. In support of the above contentions, the learned counsel for the petitioners/appellants relied upon the following decisions:

(a) Abdur Rahman and others Vs. Athifa Begum and others, reported in 1996(6) SCC 62;

(b) Jaladi Suguna Vs. Satya Sai Central Trust and others, reported in 2009 (3) L.W. 198;

(c) Secretary, Department of Horticulture, Vs. Raghu Raj, reported in AIR 2009 SC 514;

(d) Ponniammal Vs. Ramalingam, reported in 2014 (2) CTC 506;

(e) Harbans Pershad Jaiswal Vs. Urmila Devi Jaiswal, reported in 2014(4) L.W. 791;

(f) Prema and another Vs. Murugappan, reported in 2017-5 L.W. 158;

(g) Commissioner, Mysore Urban Development Authority Vs. S.S.Sarvesh, reported in 2019 (3) CTC 940.

8. The learned counsel appearing for the petitioner in C.M.P. (MD).No.5922 of 2018 in S.A.(MD).No.803 of 2006 submitted that though the learned counsel for the petitioner/appellant did not advance any arguments on 09.02.2015 and 25.02.2015, it was erroneously listed as "Part Heard" on 10.03.2015. Due to some difficulties, the previous counsel on record returned the case bundle along with change of Vakalath only on 09.03.2015 and therefore, he reported the same before the learned Single Judge of this Court on 10.03.2015. But, the learned Single Judge, instead providing time for engaging another counsel, heard the learned counsel for some of the respondents and dismissed the appeal on merits, which is contrary to Order 41 Rule 17 of C.P.C. The learned Single Judge ought to have dismissed the appeal for default. He would further submit that though the petitioner/appellant has filed an application for reception of additional documents, the learned Judge has closed the same without any adjudication. Though the learned Judge dismissed the appeal on merits, it has to be construed only as dismissal of the appeal for default. Therefore, the applications filed under Order 41 Rule 19 C.P.C. is very well maintainable. Hence, this Court may condone the delay and allow the



restoration petition and the petitioner/appellant may be given a chance for arguing the appeal on merits.

9. The learned counsel appearing for the review petitioner submitted that in the common judgment, the learned Judge did not discuss the merits of the case and decide the questions of law framed at the time of admission. He would further submit that even the questions of law framed at the time of admission has not been mentioned in the common judgment by the learned Single Judge of this Court. It is a clear case of error apparent on the face of record. Thus, he prayed to allow the review application by setting aside the judgment and decree dated 30.04.2015 passed by this Court. In support of his contention, he relied upon the following decisions:

(a) Satyendra Kumar Vs. Mas Ram Uniyal reported in (2013) 14 SCC 367;

(b) Chintaman Namdev Patil Vs. Sukhdev Namdev Patil and another, reported in (2016) 1 SCC 681;

(c) Kunwarlal Vs. Deva Bai and others, reported in (2004) 13 SCC 535; and

(d) Phanidhar Kalita Vs. Saraswati Devi and another, reported in (2015) 5 SCC 661.

10. The learned counsel appearing for the contesting respondents in unison submitted that it is false to say that the petitioners/appellants in C.M.P.(MD).Nos.5920 and 5921 of 2018 have not argued the appeal on merits and in fact, they have appeared and argued the appeals on merits and thereafter, the learned Single Judge reserved the appeals and pronounced the judgment on merits. As the appeals have been decided on merits after hearing both sides, these petitions are not maintainable and the petitioners/appellants ought to have availed appeal remedy.

11. So far as C.M.P.(MD).No.5922 of 2018 in S.A.(MD).No.803 of 3006 is concerned, the learned counsel submitted that in this case, on 09.02.2015 and 25.02.2015 the learned counsel for the petitioner / appellant and some of the respondents have argued the appeal and therefore, it was listed on 10.03.2015 under the caption "Part heard". But, on 10.03.2015, the learned counsel stated that he has given change of Vakalath to the petitioner/appellant. Considering the attitude of the petitioner/appellant and also considering the year of the appeal, the learned Judge has dismissed the appeal on merits. Therefore, the dismissal of the appeal on merits cannot be construed to be dismissal of the appeal for default. Though the petitioners/appellants knew about the dismissal of the appeal on 10.03.2015 itself, they have purposefully delayed the matter by making representation delay and the delay in filing the petition for rehearing. The petitioners/appellants have not assigned any reason for condoning the delay. Therefore, the petition for delay in filing the petition for rehearing may be dismissed. Thus, he prayed to dismiss all the miscellaneous petitions.



12. So far as the review application is concerned, the learned counsel for the contesting respondents submitted that though the learned Judge did not refer to the substantial questions of law in the common judgment dated 30.04.2015, the learned Judge has discussed the said questions in paragraph No.32(i), (ii) & (iii) and answered the same. There is no error apparent on record. This Court cannot rehear the appeal and review the judgment. Therefore, the review application may be dismissed. He would further submit that the petitioners/appellants have already participated in the final decree proceedings and contested the same and subsequently, final decree has also been passed and therefore, nothing survives for adjudication in these petitions.

13. The learned counsel appearing for the respondents 9, 11, 13 and 14, who are the legal heirs of the 2nd plaintiff in C.M.P.(MD). Nos.5922 of 2018 in S.A.(MD)No.803 of 2006 have raised no objection for allowing the delay and rehearing petitions filed by the petitioner/appellant .

14. Heard the learned counsel for the parties and perused the records carefully.

15. It is seen that S.A.(MD).Nos.288 of 2006, 571 of 2007 and 600 of 2007 have arisen out of the suit in O.S.No.708 of 1985. S.A. (MD).No.803 of 2006 has arisen out of the suit in O.S.No.1285 of 1985. Now, almost 34 years have gone from the date of filing of the suit. It is also seen that the second appeals were periodically adjourned only from the year 2014. Till 2014, the petitioners/appellants did not take steps to bring the appeals in the list and to argue the appeals. These appeals were listed to the learned Judge, who disposed of the appeals, as per the order of the Hon'ble Administrative Judge of this Court, under the caption "Specially Ordered Cases" in the year 2015. All the cases were listed before the learned Judge on several hearings. In the meantime, some of the respondents died. Steps have been taken in respect of some respondents for impleading the legal heirs. Steps and notice were due in respect of some respondents. While so, the learned Judge reserved the judgment in S.A.(MD).Nos.288 of 2006, 571 of 2007 and 600 of 2007 on 01.04.2015 and pronounced the same on 30.04.2015. In similar circumstances, when S.A.(MD).No.803 of 2006 listed under the caption "Partly heard", the learned counsel for the petitioner/appellant reported that he handed over the bundle to the parties, the learned Judge has decided the appeal on merits and dismissed the same, after hearing the learned counsel for the respondents. While so, the petitioners/appellants have filed petitions for hearing under Order 41 Rule 19 C.P.C. praying to set aside the judgment passed in the second appeal, readmit and rehear the appeal on merits.



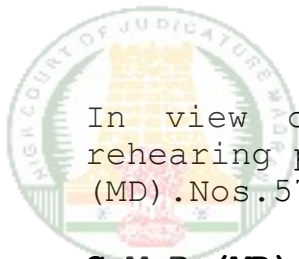
"Re-admission of appeal dismissed for default.-

Where an appeal is dismissed under rule 11, sub-rule (2), or rule 17, the appellant may apply to the Appellate Court for the re-admission of the appeal, and where it is proved that he has prevented by any sufficient cause, from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

17. The above provision makes it clear that if the appeal is dismissed for default, due to non appearance on the side of the appellant, the appeal can be readmitted and reheard, if sufficient cause is shown for such non appearance.

C.M.P. (MD) .Nos.5920 and 5921 of 2018 in S.A. (MD) .Nos.571 and 600 of 2007:

18. Admittedly, in this case, the second appeal Nos.288 of 2006, 571 of 2007 and 600 of 2007 were dismissed by the learned Judge on merits, after hearing both sides. The learned Judge has noted down the appearance of the counsel for the parties, especially the learned counsel for the appellants in the cause title of the common judgment dated 30.04.2015. The learned Judge has recorded the grounds urged in the appeals as the submissions of the learned counsel for the appellants. Therefore, it cannot be held that the appeals were dismissed for default. Though the learned counsel for the petitioners/appellants submitted that they did not argue the appeals, the learned counsel for the contesting respondents submitted that the learned counsel for the petitioners/appellants and also the respondents argued the appeal on merits on several hearings and therefore, the learned Judge has reserved the appeals and then, pronounced the Judgment on merits. More over, the appellants in S.A. (MD) .No.288 of 2006, which was also dismissed in the common judgment dated 30.04.2015, has filed only review application and he did not support the case of the petitioners/appellants in rehearing petitions. The question as to whether the petitioners/appellants in C.M.P. (MD) .No.5920 and 5921 of 2018 in S.A. (MD) .Nos.571 and 600 of 2007 have argued the appeals or not is a disputed question of fact and it cannot be decided by this Court as it would be beyond the scope of these petitions. Similarly, the question as to whether the learned Judge was right in disposing of the appeals without even impleading the legal heirs of some of the respondents, is an issue to be decided only in further appeal and not in these petitions. If at all the petitioners / appellants are aggrieved, they have to approach the appellate forum seeking challenge of the judgment and they ought not to have filed the applications under Order 41 Rule 17 C.P.C., because this Court cannot sit on appeal in the matter already decided on merits by the equivalent Bench. The scope of these petitions are very limited.



In view of the above, this Court is inclined to dismiss the rehearing petitions ie., C.M.P.(MD).No.5920 and 5921 of 2018 in S.A.(MD).Nos.571 and 600 of 2007 as not maintainable.

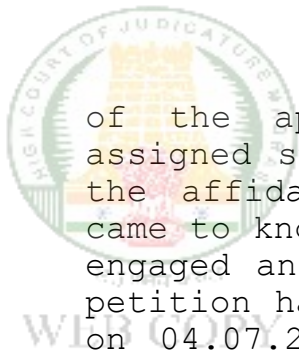
C.M.P.(MD).No.5922 of 2018 in S.A.(MD).No.803 of 2006:

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19. Admittedly, in this case, the second appeal was listed before the learned Judge on 23.01.2015, 06.02.2015 and 09.02.2015. On 25.02.2015 the learned Judge directed to list the appeal under the caption "Part Heard" on 10.03.2015. When the appeal listed under the caption "Part Heard" on 10.03.2015, the learned counsel for the petitioner/appellant was present before the Court and reported that he handed over bundle to the petitioner/appellant. The learned Judge, after recording the said submission, has discussed the merits of the case and dismissed the appeal on merits by pronouncing the judgment in the open Court. The learned counsel for the contesting respondents submitted that considering the year of the appeal, number of adjournments and also delaying tactics of the petitioner/appellant after arguing the appeal on merits, the learned Judge, after hearing the respondents, discussed the merits of the case and dismissed the appeal on merits. The learned counsel for the respondents further submit that if this kind of practice is encouraged, there would not be disposal of the case on merits and the party, who want to delay the matter, may, after arguing the matter, withdraw the appearance of the counsel and then, seek time and again delay the matter for argument. He would further submit that it will lead to forum shopping. This Court finds some force in the argument of the learned counsel for the contesting respondents.

20. Though it is stated by the learned counsel for the petitioner/appellant that the petitioner/appellant appeared before the Court and gave a memo seeking time for appointing a new counsel, it is seen that it was given only before the Registry. There is no record to show that the said memo was given in the open Court and it was brought to the knowledge of the Court. Any how, in this case, the second appeal has not been dismissed for default and it was dismissed on merits and therefore, the petition for rehearing which sought to be numbered by condoning this delay petition, is not maintainable. This Court is of the humble view that the question as to whether the disposal of the second appeal, even after reporting of the counsel of the appellant that he handed over the bundle to the parties, is right or wrong, is an issue to be decided only in the appeal and not in the petition for Order 41 Rule 19 C.P.C. Therefore, this Court is of the view that the decisions relied upon by the learned counsel for the petitioners/appellants are not applicable to the facts and circumstances of this case.

21. Let us now discuss the merits of the petition in hand. This petition has been filed by the petitioner/appellant for condoning the delay of 101 days in filing a petition for restoration



of the appeal. Absolutely, the petitioner/appellant has not assigned sufficient reason for condoning the delay of 101 days. In the affidavit itself, the petitioner/appellant admitted that she came to know about the dismissal of the appeal on 10.03.2015 and she engaged another counsel in the month of July, 2015. But, the delay petition has been filed only on 15.03.2016 and it got numbered only on 04.07.2018. Even if this petition is allowed on terms, the result of the rehearing petition would be the same. Viewing from any angle, this petition is liable to be dismissed. Hence, this Court is inclined to dismiss C.M.P.(MD).No.5922 of 2018 in S.A.(MD).No.803 of 2006.

Review Application (MD).No.73 of 2018 in S.A.(MD).No.288 of 2006:

22.Before going into the matter, this Court is inclined to refer to few decisions of the Hon'ble Supreme Court and this Court with regard to the scope of review petition:

(a) In **AIR 2000 Supreme Court 1650 [Lily Thomas, etc. Vs. Union of India and others]**, the Apex Court held that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Further, once a review petition is dismissed, no further petition to review can be entertained.

(b) In **AIR 2009 SC (Supp) 476 [State of West Bengal and Ors. Vs. Kamal Sengupta and Anr.]**, the Apex Court held that an order or decision or judgment cannot be corrected merely because it is erroneous in law or on ground that a different view could have been taken by the Court on a point of fact or law. Further, the Apex Court held that the Court cannot sit in appeal over the judgment in a review application.

(c) In **Kamlesh Verma Vs. Mayawati Others reported in (2013)8 Supreme Court Cases 320**, wherein the Honourable Supreme Court held as follows:

"12. This Court has repeatedly held in various judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient."

(d) In **2006 (2) CTC 809 [L.Jegannath and another Vs. The Land**

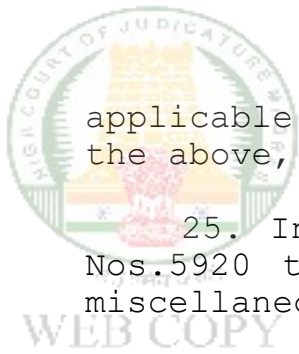


Acquisition Officer & Revenue Divisional Officer, Palani and others] a Division Bench of this Court held that review petition cannot be allowed to be an appeal in disguise and it is not permissible for an erroneous decision to be reheard and corrected.

WEB COPY (e) In 1999 (III) CTC 129 [R.M.V. Karuppiyah Ambalam Vs. **Sr.Govinda Iyer and two others]** this Court held that under Order 47 Rule 1 of the Code of Civil Procedure an error apparent on the face of the record must be such as can be seen easily by one who reads it and it must be an obvious and patent mistake. Anything which is not patent or obvious but must be established by process of reasoning would not amount to an error apparent on the face of the record.

23. It is a settled position of law that a Review Petition cannot be construed to be an appeal in disguise. A judgment or order can be reviewed only if there is an error apparent on the face of the record as contemplated under Order 47 Rule 1 of the Code of Civil Procedure. The review petitioner cannot reargue the matter on merits and in such a case, the remedy available to the review petitioner is to file an appeal and not a review. Power to review cannot be exercised on the ground that decision was erroneous on merits.

24. The present review application has been filed by the petitioners/appellants only on the ground that the learned Judge has not referred and discussed the substantial questions of law framed at the time of admission. Of-course, it is apparent, in the common judgment dated 30.04.2015, the learned Judge has not referred to the questions of law framed at the time of admission of the second appeals. But, the learned counsel for the contesting respondents submitted that though the questions of law have not been referred to in the judgment, the questions of law are answered by the learned Judge in paragraph No.32 of the common judgment dated 30.04.2015. Merely because, there is an omission to refer to the questions of law framed at the time of admission in the judgment, this Court cannot re-view the matter, especially when it is the submission of the respondents that the questions of law are answered in the judgment, though not referred to. An error which is required to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record. To justify exercise of review jurisdiction, the error must be self-evident. As stated earlier, every error whether factual or legal cannot be made subject matter of review and it can be made only subject matter of appeal. The error pointed out by the petitioners/appellants can be detected only by a process of reasoning and rehearing of the appeal. In all the decisions relied upon by the review petitioners / appellants, the Hon'ble Supreme Court only at the stage of appeal has remitted the matter for not framing and deciding questions of law. Therefore, this Court is of the humble view that those decisions are not



applicable to the facts and circumstances of this case. In view of the above, this Court is inclined to dismiss the review application.

25. In the result, the review petition as well as C.M.P.(MD). Nos.5920 to 5922 of 2018 are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

gcg

To

- 1.The Principal Subordinate Judge, Tirunelveli.
- 2.The I-Additional District Munsif, Tirunelveli.
- 3.The I-Additional Subordinate Judge, Tirunelveli.
- 4.The Principal District Munsif, Tirunelveli.

+1cc to Mr.S.Yasar Arafath, Advocate, SR.No.95366
+5 CC to M/s.A.H.SYED AHAMED, Advocate, SR-95280
+1 CC to M/s.H.ARUMUGAM, Advocate, SR-95511
+1cc to Mr.G.Venugopal,Advocate, SR.No.95425
+5cc to Mr.T.Balaji, Advocate, SR.No.95279
+10 cc to Mr.S.Balasubramanian,Advocate, SR.No.95277 & 95278
+3 CC to M/s.R.MANIMARAN, Advocate, SR-95367, 95365 & 95364
+2cc to Mr.M.P.Senthil,Advocate, SR.No.95426 & 95427

common order in
Rev.Applc.(MD).No.73 of 2018
in
S.A.(MD).No.288 of 2006
and
C.M.P(MD)Nos.5920 to 5922 of 2018
in
S.A(MD)Nos.571 and 600 of 2007 and 803 of 2006
31.10.2019

JMN(20.11.2019) 16P : 33C