



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Rev.Aplc.(MD)No.181 of 2018

in A.S(MD) No.157 of 2014

and

C.M.P.(MD)No.11037 of 2018

P.S.Chandrasekara Raja

... Review Petitioner/
Respondent/Plaintiff

Vs.

Kottaisamy (Died) ,

1.Parvatham

2.Gomathiammal

3.Selvalakshmi

4.Saraswathi

5.Om Kumaran

6.Om Sakthi

7.Gopalakrishnan

... Respondents /
Appellants / Defendants

PRAYER : Review Petition filed under Order 47 Rule 1 & 2 read with Section 114 of the Civil Procedure Code to review the order passed in A.S(MD) No.157 of 2014, dated 13.09.2017.

Prayer in AS(MD).157 of 2014:

Appeal Suit filed under Section 96 of Civil Procedure Code, against the judgment and decree passed in O.S.No.15/2007 dated 20.03.2014 on the file of the 1st Additional District and Sessions Court, Tirunelveli.

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel
for Mr.V.Venkadasamy

For 1st Respondent : Mr.H.Arumugam

O R D E R

(Order of the Court was made by N.SATHISH KUMAR, J.)

This Review application has been filed as against the judgment, dated 13.09.2017, passed in A.S.No.157 of 2014, by the respondent in the appeal /plaintiff.



2.The main contention of the Review Petitioner in the application is that the judgment of this Court is beyond the scope of pleadings and evidence and the Court should have held that time is not an essence of contract. This Court has also held that the respondent as a power agent, has executed the sale deed, in respect of 3 acres, however, the sale was executed in favour of one Kottaisamy. Hence, it is the contention that the error is apparent on the face of record. Hence, prays to review the Judgment. His further contention is that the Court has also recorded that only an extent of 8.87 acres of land was covered under Ex.A.5. Therefore, his contention is that Ex.A.5 has not been properly considered. Similarly, Ex.A.9 has also not been properly considered.

3.Heard the learned counsel appearing for the Review petitioner and the learned counsel appearing for the first respondent.

4.The main contention of the learned Senior counsel appearing for the Review Petitioner is that the SLP is also dismissed as against the judgment of this Court. It is also submitted by the learned Senior Counsel that while disposing of the appeal and there are factual errors which is apparent on the face of records. It is the contention that this Court had recorded in paragraph No.10 that only an extent of 8.87 acres alone is covered under Ex.A.5 and therefore, it is a factual error said error is not there, the decree would not have been set aside allowing this appeal. Hence, his contention is that other than the suit properties, the remaining area had already been sold in favour of the plaintiff. The plaintiff has taken steps to clear the properties free of encumbrance by filing a writ petition. Hence, his contention is that this Court ought to have considered the documents properly and prays for allowing the Review application.

5.The learned counsel appearing for the respondents submitted that the present argument of the Review petitioner is nothing but the submissions made by the appellants, in respect of the extent of area covered under Ex.A.5. Hence, it is the contention that it is unfair on the part of for the Review petitioner to file an application to review the judgment, which has considered all the aspects in the suit. Hence, prayed for dismissal and submitted that since SLP, itself is dismissed, now the Review petitioner wants to rehear the appeal in its entirety, same cannot be permitted in the eye of law.

6.Though in paragraph No.18, we recorded that the respondent had executed a sale deed, as a power agent under



Ex.A.15, factually, in fact, it should have been recorded as 1st appellant / 1st defendant. However, it has been mistakenly shown as respondent and in fact the first defendant in the suit was the power agent of the other defendants and he has executed a sale under Ex.A.15. Such mistake would not in anyway alter the decisions of the suit. The suit has been dismissed by this Court, considering the various aspects, not only with regard to ready and willingness on the part of the plaintiff, but his conduct, enforcement of a part of the contract as against the mandatory requirements under Section 12 of Specific Relief Act, besides unfair advantage in favour of the plaintiff etc.

7. Similarly, this Court has also considered the power of attorney - Ex.A.17, despite the power given in respect of the properties, properties not registered, thereby ready and willingness was absent. All these facts have been thoroughly considered by this Court. If the contention of the Review Petitioner is accepted, it is nothing but just like rehearing the entire appeal. If such application is entertained, there will not be any end for the civil litigation. The manner in which the review petition is filed before this Court would indicate that the Review Petitioner has intended to argue the appeal afresh, despite the matter reached its finality.

8. Merely because of some mistake has occurred while describing the properties, which are irrelevant to decide the appeal that itself cannot be a ground to review the entire judgment. This Court has interpreted the contract and assessed the conduct of the parties has rightly invoked the discretion to refuse the specific performance. When the appeal filed by the Review Petitioner is also dismissed in SLP, as admitted by the parties herein, the Review Petitioner under the pretext of review, cannot re-agitate the matter once again, on merits. Hence, We do not find any merits in the review petition to interfere with the judgment passed by this Court.

9. Accordingly, the Review Application stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Rm



To
The 1st Additional District and Sessions Judge, Tirunelveli.

+1 CC to M/s.V.VENKADASAMY, Advocate (SR-13863[F] dated
26/03/2021)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-14021[F] dated 26/03/2021)

Rev. Aplc. (MD)No.181 of 2018
25.03.2021

VR(CO)
TR(20.04.2021) 4P 4C