



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.06.2019

CORAM

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THE HONOURABLE MR. JUSTICE **S.S.SUNDAR**

REV.APLC (MD) No.188 of 2018

in

A.S. (MD) No.30 of 2011

and

C.M.P. (MD) No.11605 of 2018

in

REV.APLC (MD) No.188 of 2018

B.Veni

... Petitioner/Appellant/1st Respondent

Vs

1.Balakrishnan

2.Paramasivam

3.O.S.Mohammed Sherif

4.O.M.Mohammed Ehiya

5.Saravanakumar

6.Prem Narasubaimagam Sriramulu

through his Power of Attorney

O.S.Mohammed Sherif

7.Ethiraj

through his Power of Attorney

O.S.Mohammed Sherif

8.K.P.Ramesh

through his Power of Attorney

K.Perumalsamy

9.Velammal

10.Parvathi

11.Amuthavalli

12.Thirumalai Nambi

13.Shenbagavalli

14.Krishnaveni

... Respondents

Prayer: The Review Application filed under Section 114 and Order 47 and Rule 1 of Code of Civil Procedure to review the judgment passed by this Court in A.S.(MD)No.30 of 2011, dated 02.06.2017.

Prayer in AS (MD) . 30/ 2011 :

Appeal suit is filed under section 96 of Civil Procedure Code, against the Judgment and Decree passed in O.S.No.11/2010 on the file of Additional District Court (Fast Track Court-II) Tirunelveli.

**ORDER**

This review application is filed to review the judgment of this Court in A.S.(MD)No.30 of 2011 by the first respondent therein.

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2.The learned Senior Counsel for the applicant relied upon a judgment of this Court and submitted that the judgment is not a judgment at all, as the mandatory procedure under Order 41 Rule 31 CPC is not followed, inasmuch as this Court has not framed the points for determination. The learned Senior Counsel further submitted that the plaintiff has already paid a sum of Rs.1,00,000/- as advance and that the award of cost in this case is inequitable.

3.Both points raised by the learned Counsel for the review petitioner are grounds on the basis of which he can challenge the judgment of this Court, by way of further appeal before the Honourable Supreme Court. Referring to the procedural irregularity under Order 41 Rule 31 CPC, a judgment can not be reviewed. It is to be noted in this case that the review applicant has entered into an agreement and the suit filed by him for specific performance being an equitable relief can be given only after the plaintiff satisfies this Court that it is equitable to grant a decree in favour of the plaintiff. In the judgment of this Court, several facts and circumstances have been relied upon to hold that the plaintiff is not entitled to the equitable relief of specific performance. This Court has discussed all the issues elaborately and the judgment cannot be questioned merely because this Court failed to frame points for determination.

4.This Court and the Honourable Supreme Court has repeatedly held that a review is not an appeal in disguise. Unless error is apparent on the face of records or the error can be deduced, without a long drawn process of reasoning, the review cannot be entertained. This is also exactly a case, where, the review is filed on grounds, which are available for the appellant to challenge the judgment of this Court by way of an appeal. This Court find no reason or ground to review the judgment of this Court in A.S.(MD) No.30 of 2011, dated 02.06.2017.

5.Accordingly, the review application is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //



TO
The Additional District and Sessions Judge,
Fast Track Court No.II,
Tirunelveli.

+1cc to Mr.T.SELVAM, Advocate, SR.No. 68041

+1cc to Mr.M.P.SENTHIL, Advocate, SR.No. 67889

REV.APLC (MD) No.188 of 2018
in
A.S. (MD) No.30 of 2011

CMR

KK/SAR/24.06.2019/3P-4C