



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.02.2018
PRONOUNCED ON : 23.02.2018

CORAM

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THE HONOURABLE MR.JUSTICE T.RAVINDRAN

Review Application (MD) No. 4 of 2018
in
A.S.No.1294 of 1995

1. Vasudeva Raja (Died)
2. V.Selvaraj
3. Padmavathy (Died)
4. V.Sumathi
5. V.Lakshmi
6. V.Uma Rani
7. V.Maharaja

... Applicants/Appellants

Vs.

1. Rahamath Bivi
2. Sahul Hameed
3. Ameer Kasim
4. Mumtaz Begum
5. Madhurunnisha
6. Subida Begum

... Respondents/Respondents

Prayer :- The Review Application has been filed under Order 47 Rules 1 & 2 read with Section 114 of C.P.C to review the judgment and decree dated 21.09.2017 passed in A.S.No.1294 of 1995, on the file of this Honourable Court.

Prayer in A.S.No.1294 of 1995:

Appeal is filed under Section 96 of the Code of CPC to set aside the Judgment and decree passed by the learned Subordinate Judge of Kumbakonam in OS 71 of 1987 dated 30.11.1994.

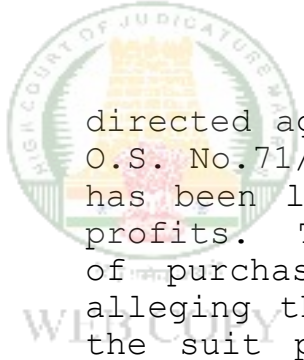
For Applicant : Mr. D.Malaichamy

ORDER

Seeking the review of the judgment and decree dated 21.09.2017 passed in A.S.No.1294 of 1995, the applicants have laid the review application

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2. It is found that the above said first appeal had been

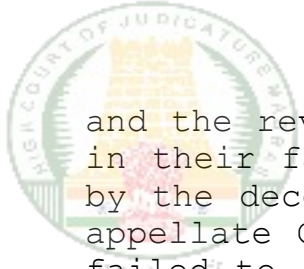


directed against the judgment and decree dated 30.11.1994 passed in O.S. No.71/1987, on the file of the Sub Court, Kumbakonam. The suit has been laid by the plaintiffs for the reliefs of possession and profits. The plaintiffs claiming title to the suit property by way of purchase of the same from Krishnamurthy on 26.03.1963 and alleging that the review applicants had been put in possession of the suit property by the deceased first plaintiff on account of their acquaintance with the deceased first plaintiff in connection with his business activities and accordingly, it is the case of the plaintiffs that the possession of the suit property by the review applicants is only in the nature of a license and inasmuch as the review applicants failed to deliver the possession of the suit property, despite the demands made with reference to the same, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

3. The defence has been taken by the review applicants contending that over a long period of time they had been in possession and enjoyment of the suit property and it is admitted that they had been doing sundry jobs to the first plaintiff, who is engaged in motor mechanical works and accordingly, it is the plea of the review applicants that when they had expressed their intention to purchase a property, according to them, the deceased first plaintiff agreed to sell the suit property to them and in consideration thereof, it is their case that they had entrusted 15 sovereigns of jewels and also the deceased first plaintiff had retained a portion of the salary to which they are entitled to and thus, it is their case that pursuant to the above said arrangement i.e., oral agreement, their possession had been confirmed in respect of the suit property by the deceased first plaintiff and however, the sale deed had not come into existence in respect of the suit property in their favour and they had also not endeavoured to obtain the sale deed immediately from the deceased first plaintiff, on account of the close acquaintance between the parties concerned and as the deceased first plaintiff had agreed to convey the property after the conclusion of the litigation in O.S.No.74/1975, hence, it is their case that the plaintiffs are not entitled to seek the possession of the suit property from them. It is also found that the review applicants had claimed the benefits of Section 53 A of the Transfer of Property Act to resist the plaintiffs action.

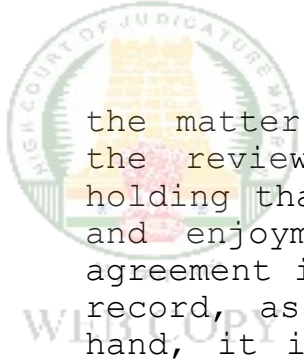
4. On a consideration of the materials placed by the respective parties, the trial Court did not find acceptance with the case of the review applicants, accordingly decreed the suit as prayed for. Aggrieved over the same, the first appeal has been preferred by the review applicants.

5. The contentions raised before the trial Court were again raised by the review applicants in the first appellate Court and the first appellate Court, on a consideration of the materials placed on record and after hearing the submissions, finding that the title of the plaintiffs in respect of the suit property having been admitted



and the review applicants had taken the plea of oral sale agreement in their favour, for being put in possession of the suit property, by the deceased first plaintiff, as putforth by them and the first appellate Court, accordingly finding that the review applicants had failed to establish the oral sale agreement as pleaded by them and also finding that their plea of oral agreement cannot be a true one and if the same had been a true transaction, immediately after the conclusion of the proceedings in O.S.No.74/1975, the review applicants would have endeavoured to obtain the sale deed from the deceased first plaintiff and on the other hand, further finding that the review applicants had been in possession of the suit property only on account of their acquaintance with the deceased first plaintiff in doing sundry jobs for him, accordingly determining that the possession of the suit property by the review applicants is only in the nature of a license and holding that the said license having been terminated by the plaintiffs by the issuance of the suit notice, therefore, it has been determined by the first appellate Court that the plaintiffs cannot claim to be in legal possession of the suit property and they could only be termed as trespassers and accordingly, finding that the review applicants have failed to establish their legal entitlement to continue to be in possession of the suit property and also finding that the plea taken by them claiming the benefits under Section 53 A of the Transfer of Property Act not being pressed and even if the same had been pressed, the same finding to be not entitled to be availed of by the review applicants, finally concluded that the first appeal preferred by the review applicants is devoid of merits and accordingly, held that, as determined by the trial Court, the plaintiffs are entitled to the recovery of possession of the suit property as well as the other reliefs from the review applicants as claimed in the plaint and resultantly, dismissed the first appeal laid by the review applicants.

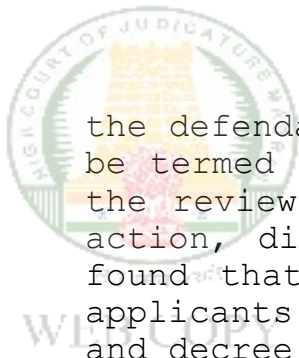
6. Seeking the review of the same, the present application has come to be laid. It is contended on behalf of the counsel appearing for the review applicants that this Court has wrongly determined that the review applicants had pleaded that they had been in possession and enjoyment of the suit property pursuant to the oral sale agreement. However, on a perusal of the pleas contained in the written statement, it is found that the review applicants had taken only the plea of oral sale arrangement for retaining their possession in the suit property. Accordingly, it is found that they had also raised the plea of the benefits of part performance under the alleged oral sale arrangement. In such view of the matter, the contention now putforth by the review applicants that they had pleaded only as claiming to be in possession of the suit property as the full owners thereof as such cannot be accepted in any manner. If that be so, the review applicants would have placed acceptable and valid documents to establish their claim of title to the suit property. However, other than the pleadings of oral sale agreement, the review applicants have not placed any material as such to claim full ownership in respect of the suit property and in such view of



the matter, the contentions putforth by the counsel appearing for the review applicants that the determination of this Court in holding that the review applicants are claiming to be in possession and enjoyment of the suit property pursuant to the oral sale agreement is patently false and an error apparent on the face of the record, as such, cannot be accepted in any manner. On the other hand, it is found that the review applicants, having accepted the plaintiffs' title, had accordingly resisted their claim of possession only on the footing that they are entitled to retain the possession of the suit property, on the basis of the oral sale arrangement entered into between them and the deceased first plaintiff. Therefore, the above point projected by the review applicants for reviewing the judgment and decree of this Court passed in the first appeal does not merit acceptance, as the same is found to be not an error or mistake apparent on the face of the record.

7. In the light of the above position, the further contention putforth by the Counsel appearing for the review applicants that this Court had shifted the burden wrongly upon the review applicants, in respect of the plaintiffs' claim falls to the ground. When the plaintiffs' title to the suit property has not been disputed and even, according to the review applicants, the deceased first plaintiff had agreed to convey the suit property to them, on the conclusion of the suit proceedings in O.S. No.74/1975 and when the suit has come to be concluded on 15.11.1978 itself, if really the review applicants had any entitlement to the suit property on the basis of the oral sale arrangement, they would have endeavoured to obtain the sale deed from the deceased first plaintiff immediately thereafter. On the other hand, only after the laying of the suit by the plaintiffs in the year 1987, they have taken the plea of the alleged oral sale agreement and in such view of the matter, it is determined by the first appellate Court rightly that the burden is only upon the review applicants to establish their defence version, particularly, when they have not thrown any challenge to the plaintiffs' title to the suit property as such. Therefore, the above contention projected by the review applicants is found to be of no substance and accordingly rejected.

8. The last point urged by the review applicants is that this Court has wrongly determined that the possession of the review applicants of the suit property is only in the nature of a license. However, when it is noted, on the materials placed, that the review applicants have failed to establish their title to the suit property in any manner, as per the legal requirements and had only resisted the plaintiffs action on the basis of the oral sale arrangement and that plea having been miserably failed to be established by the review applicants, this Court had rightly accepted the contention of the plaintiffs that the possession of the review applicants of the suit property could only be in the nature of a license and accordingly, on the plaintiffs determining the said license by the issuance of the suit notice, this Court has rightly determined that



the defendants possession of the suit property thereafter could only be termed in the nature of a trespass and accordingly, finding that the review applicants had no cause at all to defend the plaintiffs action, dismissed the first appeal preferred by them. It is thus found that the third point above stated and urged by the review applicants cannot at all be countenanced for reviewing the judgment and decree involved in the matter.

9. In the light of the above discussions, considering the principles laid apropos of the review jurisdiction as enunciated by the Apex Court in the decision reported in **(2013) 8 SCC 320 (Kamlesh Verma Vs. Mayawati and others)**, it is found that none of the criteria enumerated under Order 47 Rule 1 of the Code of Civil Procedure, having been made out by the review applicants and on the other hand, the review applicants seem to be only repeating the old contentions already raised by them and rejected by this Court and when the abovesaid points cannot be canvassed again in the review petition, in the absence of material error manifest in the judgment impugned or the same had resulted in a miscarriage of justice, it is found that the review application is laid by the applicants only to urge the same points once again for dragging the proceedings endlessly one way or the other.

10. In the light of the above reasons, the review application is found to be devoid of merits and accordingly dismissed. Consequently connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge, Kumbakonam.

Copy To:-

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.D.MALAICHAMY, ADVOCATE IN SR No. 51096

SLI

TE/SV-MMS/SAR-4 : 27/03/2018 : 5P/5C