



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 24.10.2018

DELIVERED ON : 31.10.2018

WEB COPY

CORAM:

THE HONOURABLE Mrs. JUSTICE R. THARANI

Rev. Aplc.(MD)No.60 of 2018

and

C.M.P. (MD)No.5936 of 2018

Subanandaraj

... Review Petitioner/Appellant

Vs.

Mani

... Respondent/Respondent

PRAYER: This application is filed under Order 47 Rule 1 and 2 r/w. Section 114 of CPC, to review the judgment and decree passed by this Court in S.A.No.388 of 2013 dated 11.05.2016.

Prayer in SA(MD)No. 388 of 2013 :

To set aside the Judgment and Decree dated 28.01.2013 passed in A.S.No.34 of 2011 on the file of the Subordinate Judge, Kuzhithurai, reversing the Judgment and Decree dated 14.12.2010 passed in O.S.No.527 of 2005 on the file of the II Additional District Munsif Court, Kuzhithurai, and allow the Second Appeal, and thus render justice.

For Petitioner

: Mr.C.Dhanseelan

For Respondent

: Mr.S.Anand Chandrasekar

For M/s.Sarvabhauman Associates

ORDER

Heard Mr.C.Dhanseelan, learned counsel appearing for the petitioner and Mr.S.Anand Chandrasekar for M/s.Sarvabhauman Associates, learned counsel appearing for the respondent.

2.This application has been filed to review the Judgment and Decree passed by this Court in S.A.No.388 of 2013 dated 11.05.2016.

3.The respondent herein has filed a petition for Special Leave to Appeal No.20902-20903 of 2018. The Hon'ble Supreme Court has ordered to decide the review petition on merits and in law preferably within a period of two months.

4.The review petitioner is the appellant in S.A.No.388 of



2013 and he is the second defendant in the suit in O.S.No.527 of 2007. The respondent herein is the respondent in S.A.No.388 of 2013 and he is the plaintiff in the suit. The respondent herein has filed a suit in O.S.No.527 of 2005 before the II Additional District Munsif Court, Kuzhithurai seeking a prayer of declaration of title over the B schedule property and for recovery of future mesne profits at the rate of Rs.300/- (Rupees Three Hundred only) per annum from the date of plaint till recovery of possession. The II Additional District Munsif Court has dismissed the suit. Against the order of dismissal of the suit, the respondent herein has filed an appeal in A.S.No.34 of 2011 before the Sub Court, Kuzhithurai. The learned Sub Judge allowed the appeal and set aside the Judgment passed by the trial Court by declaring the title of the respondent over the B schedule property and ordered recovery of possession.

5. Against the order of the first Appellate Court, the petitioner herein has filed a second appeal before this Court. This Court by order dated 11.05.2016 dismissed the appeal. Against the order, the petitioner herein has filed this review application.

6. On the side of the petitioner, it is stated that there are error apparent in the order of this Court in the second appeal. It is stated that a rough sketch dated 11.05.2016 was prepared by the Hon'ble Judge in S.A.No.388 of 2013 and that the second appeal was decided merely on the basis of that sketch, which is beyond the scope of Section 100 of C.P.C.

7. The sketch was not supported by evidence or judicial proof and that this sketch will lead to miscarriage of justice. On the side of the petitioner, it is stated that when the Commissioner did not identify 'B' Schedule property, the Hon'ble Judge has showed 8 cents of land within the letters ABCD with a remark as "encroached portion" and that the sources, authority or authentication of the said plan is not available either in the Judgment or in the body of the said rough sketch.

8. On the side of the petitioner, it is stated that the the sketch prepared by this Court did not speak about the extent of area available to the review petitioner and his brother and that there are factual errors in the sketch. It is stated that the Commissioner has pointed out the area in possession of the plaintiff and his brother is 1 acre 45 cents and that in possession of the defendant and his brothers is 1.45 acres alone and that this statement of the Commissioner clearly reveals that there is no encroachment and that the plaintiffs' family and the defendants' family have equal shares and they are in possession of equal share and that if at all there is any encroachment, it may be by the brother of the respondent and not by this petitioner.

9. The learned counsel appearing for the petitioner relied on the judgment passed by the Hon'ble Supreme Court in the case of **Rajendra Kumar and Others v. Rambhai and others** reported in **AIR 2003**



Supreme Court 2095, which are as follows:

"Order to be reviewed must suffer from error apparent on face of order-And permitting the order to stand will lead to failure of justice"

10. The learned counsel appearing for the petitioner relied on the Judgment passed by the Supreme Court in the case of **Rajender Singh v. Lt. Governor and others** reported in **2005 (5) CTC 487**, which are as follows:

"Non-consideration of relevant documents and error apparent on face of record are grounds on which High Court can review its own Order in writ petition."

11. On the side of the respondent, it is stated that there is no bar under the C.P.C., for the Hon'ble Judge to prepare a sketch. On the side of the respondent, it is stated that the Judgment passed by this Court is not vitiated by any error apparent warranting interference in the order. In the guise of review, the petitioner is seeking to re-hear the second appeal which is impermissible in law.

12. The learned counsel appearing for the respondent relied on the Judgment passed by this Court in the case of **Parsion Devi and others v. Sumitri Devi and others** reported in **(1997) 8 Supreme Court Cases 715**, which are as follows:

"Review-Scope of jurisdiction-"Mistake or error apparent on the face of the record"-Is one which is self-evident and does not require a process of reasoning-Distinct from "erroneous decision"-so rehearing the matter for detecting an error in the earlier decision and then correcting the same do not fall within the ambit of review jurisdiction-Review jurisdiction cannot be used as appellate jurisdiction"

13. On the side of the respondent, it is stated that the respondent was in absolute possession having title to an extent of 48 cents lying in R.S.No.292/1 within specific boundaries which will be evident from document Ex.A1. But due to illiteracy, father of the respondent has wrongly mentioned the Survey Number as S.No.293/10, instead of S.No.292/1.

14. On the side of the petitioner, it is stated that the respondent is claiming the schedule property on the basis of Ex.A1 and the respondent is claiming that the survey number stated in the Ex.A1 is wrong and he is claiming the property only on the basis of the boundaries as stated in Ex.A1. It is stated that the boundaries stated in Ex.A1 are the boundaries for the entire property and that cannot be taken as boundary for the disputed land.

15. On the side of the respondent, it is stated that there is no illegality on placing reliance on the Commissioner report though not marked. Though the Commissioner report was not marked, the report of the Commissioner which was received during the pendency of the appeal forms part of the records and the Court can



look into the same. When the petitioner has not raised any objections to the contents of the said report, he cannot question the same.

16. On the side of the review petitioner, it is stated that an area with an extent of 10 cents retained by Muthunayagam which stands in the name of Franklin Roosevelt was sub divided into 293/10C which is stated in the Commissioner's plan was not taken for calculation in the sketch prepared by this Court. The area available for the plaintiffs and their brothers as per the sketch is more than what is reported by the Commissioner.

17. A portion of 62 cents was in enjoyment of Johnrose brother of the respondent which was with in wire fence on all the four sides. The above said Johnrose is entitled only to 52 cents. This fact was not considered by this Court.

18. It is further stated that the plaintiffs who got 26 cents in survey No.293/10 has omitted to claim the same from his brothers and father. He is wrongly claiming that area from the petitioner herein that too in Survey No.292/1.

19. A perusal of the record reveals that this Court has drawn a sketch to decide the dispute but the Court has not visited the suit property and the drawing was made only on the basis of the Commissioner report and on the basis of other documents on record (i.e.) Ex.A1, A7 and A8. The said Commissioner report was not marked and the Commissioner was not examined in the lower Appellate Court.

20. A perusal of sketch reveals that the property that belonged to review petitioners and his brother and the extent of land that belonged to the review petitioner's father was not stated in the sketch. An area of 10 cents of land in Survey NO.293/10 which belonged to the respondent family and is in possession of one Franklin, is not included in the sketch drawn by this Court.

21. In the above circumstances, it is decided that there is apparent error in the Judgment of this Court and the second appeal require re-consideration.

22. For the above said reasons, this review application is allowed by setting aside the Judgment and Decree of this Court in S.A.(MD)No.388 of 2013 dated 11.05.2016. No Costs. Consequently, C.M.P.(MD)No.5936 of 2018 is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/



To

1.The Additional District Munsif, Kuzhithurai.

2.The Subordinate Judge, Kuzhithurai.

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

+ 1 CC TO Mr.S.SIVAKUMAR, ADVOCATE IN SR No. 93321

+ 1 CC TO M/s.SARVABHAUMAN ASSOCIATES, IN SR No. 93724

MRN

TE/PM/SAR-4 : 08/01/2019 : 5P/7C

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31.10.2018