



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

REV.APLC(MD)No.91 of 2013

in SA(MD).1615 of 1998

Govindan

...Petitioner/Appellant

Vs.

Bommakkal (died)

Bakkiammal (died)

S.Rajasekaran (died)

1.Jothi Manickam

Rajeswari Ammal (died)

2.Muthulakshmi

3.Leelavathi (died)

4.Parameswari

5.Chandrakala

6.Sundareswari

7.Rajasundari

8.Rajasunder

9.Shyam Sundar

10.Jeyaraj

11.J.Jawahar Santharaj

12.J.Jagatheswara Raj

13.M.Vairammal

14.R.Shyamala Sundari

15.R.Raja Sundar

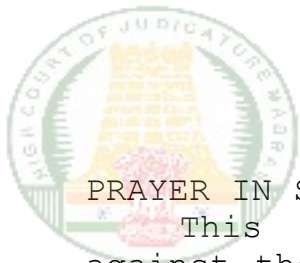
16.R.Sundar Raj

17.R.Jeyakumar

..Respondents/Respondents

(R17 is brought on record as legal heir of the deceased third respondent vide court dated 24.02.2021 made in CMP(MD)No.10190,10192,10194 of 2019 in REV.APLC (MD)No.91 of 2013)

PRAYER: This Review Application has been filed under Section 114 of the Civil Procedure Code r/w order 47 Rule 1 of the Civil Procedure Code, against the judgment and decree dated 19.04.2013 made in S.A.No.1615 of 1998 on the file of this Court.



PRAYER IN SA.1615 OF 1998:

This Second Appeal is filed under section 100 of C.P.C., against the decree and judgment dated 13.02.1998 made in A.S.No.220 of 1994 on the file of the Principal District Judge, Srivilliputhur, confirming the decree and judgment dated 09.04.1992 made in O.S.No.67 of 1989 on the file of the Subordinate Judge, Srivilliputhur.

For Petitioner	: Mr.A.Arumugam
For R1	: No Appearance
For RR5 - 9 & 13 - 16	: Mr.D.P.Sundararaj

JUDGMENT

This application has been filed to review the judgment of this Court in the Second Appeal

2. The grounds, on which the review application has been filed, are:-

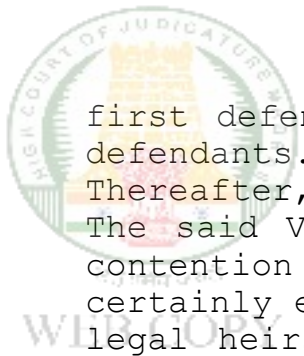
(1) The judgment reported in **AIR 1932 Madras 361 [Narasimha Rao vs. Narasimhan]**, ought not to have relied upon to hold that the divided son is not entitled inherit the property of the deceased father.

(2) This Court ought to have seen that the appellant is entitled to 1/28th share in 'A' and 'B' schedule properties. If the settlement deed in favour of the Bommakkal and Ayyammla is true and valid and the Court has come to the conclusion that it has blossomed into an absolute estate, the appellant is not entitled to any share on the date of plaint. The Court has come to the conclusion that in 'C' schedule property, the appellant is entitled to 5/28 share.

(3) This Court ought to have seen that seen that the divided son was not excluded by daughter of the deceased and widow of the deceased.

(4) This Court ought to have seen that the female settlees under settlement deed did not have any pre-existing right of maintenance in the settled property ever as per settlement and absolutely no evidence is available to show that they had any pre-existing interest in the settlement suit property.

3. The learned counsel appearing for the review petitioner mainly contended that though the suit was filed for partition, 'A' schedule property is a separate property of one Sangiah. He has settled the same under Ex.A4 to one Sundararajan, father of the plaintiff herein. The said Sundaraj had four wives, namely, Valliammal, Bommakkal/first defendant, Ayyammal and Packiammal/fourth defendant. Valliammal is the mother of the plaintiff. The



first defendant had two sons, who are arrayed as third and fourth defendants. The grandfather of the plaintiff died on 09.10.1978. Thereafter, Valliammla executed a Will in favour of the plaintiff. The said Vallimmall also died in the year 1981. Hence, it is the contention that the plaintiff born through the first wife is certainly entitled to a share from his father's property. The other legal heirs, who were added as parties, are also entitled to 1/7 share jointly, remaining 6/7 share goes to three sons and three daughters. Hence, it is the contention that the plaintiff is entitled to 5/28 share in the 'A' schedule property and the alleged release deed in Ex.B4 executed by the plaintiff in favour of his father does not extinguish the right of the plaintiff, subsequent to the father's death. 'C' schedule property were settled to one Bommakkal and Ayyammal by sundarajan and his father Sangiah. The said Bommakkal and Ayyammal along with Rajeswari and Muthulakshmi executed a release deed in favour of the defendants 2 to 4. 'D' schedule property is concerned, it is purchased by Sundararajan under Ex.A7 dated 10.07.1968. Therefore, the plaintiff is entitled to a share in the property.

4. The Court has non-suited the appellant, relying upon the judgment in **AIR 1932 Madras 361 [Narasimha Rao vs. Narasimhan]** to hold that the divided son is excluded in the matter of succession to the estate of the deceased father. Hence, it is the contention that in respect of separate property of his father, the principles of coparcenary does not apply. Under Section 8 of the Hindu Succession Act, 1956, there is no distinction between the divided son and undivided son in the matter of succession to the estate of the deceased male Hindu died after 1956. Hence, it is the contention that he is the only legal son and other sons of Sundararajn are not coparceners. Hence, it is prayed that the decree has to be passed in favour of the petitioner when there is a mistake of law.

5. The learned counsel appearing for the respondents submitted that the points urged in this review application were already canvassed in the second appeal. This Court has considered the entire submissions and disposed of the second appeal. Therefore, this review application filed on the same grounds is not maintainable when there is no error apparent on the face of the record. Even the judgment of the Court is erroneous, that itself cannot be a ground to review the judgment, which was rendered on merits. Hence, prayed for dismissal of the review application.

6. The second appeal was disposed on 19.04.2013 by this Court. Thereafter, this application has been filed by engaging other counsel. The present second appeal was disposed of along with S.A.(MD)Nos.1615 and 1616 of 1998. Originally, O.S.No.246 of 1989 was filed by three plaintiffs for the relief of declaration that the plaintiffs have vested remainder rights jointly with the defendants 3 to 8 in the suit properties as per the registered settlement deed dated 10.07.1968. In the two suits, one suit was filed by the

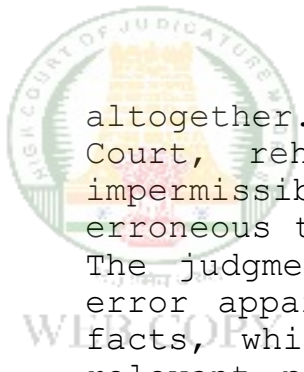


review petitioner herein claiming partition, other by the respondents herein seeking relief of declaration that they have vested remainder rights. The review petitioner has filed a suit in O.S.No.67 of 1989 claiming 5/28 share in the 'A' and 'D' schedule properties and 1/76 share in the 'B' schedule property and 3/15 share in the 'C' schedule property. The three second appeals have been filed as against the concurrent findings of the Courts below. This Court has also elaborately discussed and dismissed the second appeals.

7. The main ground urged on behalf of the review petitioner in the second appeal is that he is entitled to claim shares from his father's interest in the property, after the advent of Hindu Succession Act, 1956. However, the above contentions were negatived by the Court by taking note of the earlier partition suit filed by him as against his father. and this Court has also held that the settlement deed executed in favour of the other defendants by the father of the plaintiff, Sundararajan is enlarged to absolute estate in favour of the female legal heirs, namely wives. This Court has also held that in view of the pre existing right of maintenance, limited estate was enlarged into absolute estate. Further, as the review petitioner has already filed a partition suit as against his father's self acquired property, he has left the family and his reunion has not been proved. Section 8 of the Hindu Succession Act would come into effect only when a male dies intestate.

8. In this case, partition was already effected and there is no proof for reunion and the property devolved in the wife's name has been enlarged into a full estate in favour of other wives and they have sold the property. Hence, the plaintiff cannot claim any right in the suit property. The points were already urged before this Court in previous occasion and this Court has also elaborately discussed the matter and non-suited the plaintiff. This Court has referred the judgment of the year 1932 reported in **AIR 1932 Madras 361 [Narasimha Rao vs. Narasimhan]** to show that the proposition of reunion has not been proved and non-suited the plaintiff.

9. The second appeals were dismissed not only on that ground but also on other grounds. This Court also took note of the fact that the settlement also came to be executed in view of the maintenance and limited extent granted to the wife of Sundararajan enlarged into the absolute estate were also sold and non-suited. Admittedly, other sons born to Sundararajan through other wives were also brought as parties to the suit. It is to be noted that the entire property was not partitioned, only the property of the plaintiff alone got divided by filing a partition suit as against his father. These facts have been taken note by this Court. It is also to be noted that the marriage of four wives is much prior to the Act, 1956 and all the sons born through each of the wives were also living with him as joint family. These facts cannot be ignored



altogether. When the matter was already canvassed before this Court, rehearing the same issue under the guise of review is impermissible. Even assuming that the decision of the Court is erroneous that itself is not a ground to review the entire judgment. The judgment can be reviewed only when there is some mistake or error apparent on the face of the record or discovery of any new facts, which are not within the knowledge of the parties at the relevant point of time. The negatived points by this Court are urged in the review petition by engaging a different Lawyer. Hence, this Court is of the view that while exercising the jurisdiction to review, rehearing of the entire matter once again is not permissible.

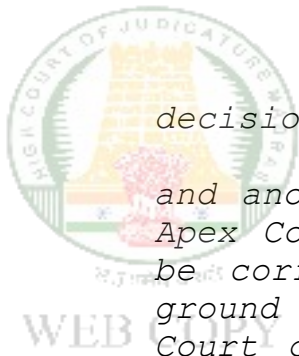
10. In the judgment reported in **2014 (3) MWN (Civil) 634 [M.Kamala Kannan and others vs. M.Manikandan]**, this Court has held that the review petitioners cannot reargue the matter on merits and the review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 of the Code of the Civil Procedure and exercise of inherent jurisdiction is not invoked for reviewing any order. In the said judgment, the following judgments are relied upon on the side of the respondent therein:-

1.Meera Bhanja vs. Nirmala Kumari Choundhury [AIR 1995 SC 455], wherein the Hon'ble Supreme Court held that review Court cannot re-appreciate the entire evidence and reverse the finding of the Appellate Court. Further, the finding given by the Appellate Court cannot be reviewed even though it was erroneous.

3.R.M.V.Karuppiyah Ambalam vs. Sr.Govinda Iyer and two others [1999 (3) CTC 129], wherein this Court has 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 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.

4. Lily Thomas etc., vs. Union of India others [AIR 2000 SC 1650], wherein 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.

5.L.Jegannath and another vs. The Land Acquisition Officer and Revenue Divisional Officer, Palani and others [2006 (2) CTC 809, wherein a Division bench of this Court held that Review Petition cannot be allowed to be an Appeal



decision to be reheard and corrected.

6. *State of West Bengal and others vs. Kamal Sengupta and another* [AIR 2009 SC (Supp) 476]. in this judgment, 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.

11. In the judgment reported in **1995(II) CTC 164 [Kandasamy vs. Rathinambal and five others]**, this Court has held that the power of review can be exercised to correct the accidental mistake, miscarriage of justice, error of law to meet the ends of justice.

12. There is no dispute with regard to the above proposition. But under the guise of review, entire matter cannot be re-agitated. Hence, this Court do not find any merit in this petition. Accordingly, this Review Application is dismissed. No costs.

Sd/-

Assistant Registrar(CO)

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/ /2021

Sub Assistant Registrar(CS)

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To

1.The Principal District Judge, Srivilliputhur.

2.The Subordinate Judge, Srivilliputhur.

Copy to

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai(2 copies).

Judgment made in
REV.APLC(MD)No.91 of 2013
05.03.2021

SRK(CO)

TR(22.03.2021) 6P 5C