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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.03.2019

PRONOUNCED ON: 13.03.2019

CORAM:
THE HON'BLE MR.JUSTICE T.RAVINDRAN

Review Application No.65 of 2019
in
S.A.No.2083 of 2004

Sri Throwpathiamman Koil Nangavalli
Rep. By its Hereditary Trustees

1.V.Shanmugam

2.N.V.Arthanari ... Review Petitioners/Appellants

Vs.

1.The Executive Officer,
Nangavalli Town Panchayat,
Nangavalli Post and Mettur Taluk.

2.Varadarajan

3.Kondaiyyan @ Subban

4.Mani

5.Prakasam

6.Minor Janardhanam

7.Minor Bhoopathi

[Minor Respondents 6 & 7 are represented
by their Court Guardian Mr.P.Srinivasan,
Advocate, Mettur. ...Respondents/Respondents

Prayer:

Review Application is filed under Order 47 Rule 1
read with Section 114 of the Code of Civil Procedure against the
judgment and decree dated 06.07.2018 in S.A.No.2083 of 2004.



Prayer in SA.No.2083 of 2004

Second Appeal has been filed U/s 100 of CPC against the Judgement and Decree dated 31/08/2001 passed AS No.43/99 on the file of the Subordinate Judge, Mettur, Confirming the Judgement and Decree dated 30/01/1996 passed in O.S.No.380 of 1989 on the file of the District Munsif Court, Mettur.

For Review Petitioners :Mr.V.Bhiman

O R D E R

The Review Application is directed against the judgment and decree dated 06.07.2018 passed in Second Appeal No.2083 of 2004.

2. The Second Appeal No.2083 of 2004 has been preferred, challenging the judgment and decree dated 31.08.2001 passed in A.S.No.43 of 1999 on the file of the Subordinate Court, Mettur, confirming the judgment and decree dated 30.01.1996 passed in O.S.No.380 of 1989 on the file of the District Munsif Court, Mettur.

3. The plaintiffs /Review petitioners having lost their suit in both the Courts had preferred the second appeal. The plaintiffs had laid the suit for permanent injunction and putforth the case that the suit property has been in their possession and enjoyment and the defendants without any entitlement attempted to interfere with their possession and hence accordingly sought for the relief of permanent injunction against the defendants. The defendants resisted the plaintiffs' suit contending that the suit property is vested with the Panchayath and not with the plaintiffs' temple as such and accordingly repudiated the claim of title, possession and enjoyment of the suit property by the plaintiffs in toto.

4. The Courts below on an appreciation of the materials placed on record holding that the plaintiffs have failed to establish that the suit property is in their possession and enjoyment, dismissed the suit laid by them. Impugning the same, the second appeal has been preferred.

5. In the second appeal, this Court has taken into consideration all the materials projected by the respective parties and noting that the plaintiffs had miserably failed to establish that the suit property had been assigned to them as



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claimed in the plaint and had failed to mark any title document or other valid document conferring the title upon them in respect of the suit property and furthermore, despite the plea of the defendant repudiating the claim of title to the suit property on the part of the plaintiffs, the plaintiffs having failed to seek the relief of declaration of title to the suit property as per law, on that footing also, held that the suit laid by the plaintiffs is not legally sustainable and liable to be dismissed.

6. Furthermore, considering the materials placed on record by the plaintiffs, noting that the letter marked as Ex.A2 by them dated 05.05.1989 did not contain any particulars pertaining to the suit property and accordingly, refused to place any reliance upon the same as done by the Courts below. The adangal extract projected by the plaintiffs marked as Ex.A3 dated 13.04.1989, being found to have been secured by the plaintiffs a few days prior to the institution of the suit and the said document containing various alterations and with reference to the same, when no proper explanation had been offered on the part of the plaintiffs and also the plaintiffs having failed to correlate the properties described therein with the suit property, accordingly, also noting that the plaintiffs have failed to produce the adangal extract for the other fassalis, accordingly, did not chose to rely upon Ex.A3 for accepting the plaintiffs' case. Ex.A4 is found to be the complaint lodged by the plaintiffs with the police and therefore the same would not be useful to sustain the claim of title, possession and enjoyment of the suit property, hence the same was not accepted for accepting the plaintiffs' case as such. Ex.A5 letter has been projected to show that the patta requisition has been given by the plaintiffs to the Tahsildar and by way of the same, this Court held that the document disclosed that the patta was not granted in favour of the plaintiffs and also noting that Ex.A5 letter had come into existence after the institution of the suit, did not place reliance upon the said document. The documents marked as Ex.A6 and A7 marked by the plaintiffs having also come into existence after the institution of the suit, the same had not been relied upon for upholding the plaintiffs' case. This Court after noting that by way of the letter marked as Ex.A8, the Panchayat Union had been asserting title in respect of the suit property and exercising control over the same and accordingly held that the said document would not be, in any manner, useful to sustain the plaintiffs' case. Thus, it is seen that this Court on a consideration of the materials projected by the plaintiffs determined that the plaintiffs have failed to establish their claim of title, possession and enjoyment of the suit property as put forth by them.



7. Per contra, on an appreciation of the documents projected by the defendants marked as Ex.B1 to B3, this Court noting that the suit property had been vested with the Panchayath and it is only the Panchayath, who had been leasing the suit property to others and collecting the rents and accordingly held that it is only the Panchayath namely the first defendant, who had been exercising control and management of the suit property and accordingly held that the plaintiffs are not entitled to obtain the relief of permanent injunction against the defendants.

8. In the light of the abovesaid determination of this Court, noting that the plaintiffs have no case at all for seeking the reliefs as prayed for, resultantly, dismissed the second appeal preferred by the plaintiffs by way of the impugned judgment and decree.

9. Seeking to review the said judgment , the present Review Application has come to be laid.

10. The plaintiffs' counsel contended that the Court has failed to note the nature of the property, being a Gramanatham and also failed to note that the plaintiffs had erred in not marking the documents projected by them in the interlocutory application and if the said documents are taken into consideration, the title, possession and enjoyment of the suit property by the plaintiffs would have been upheld and therefore urging the Court to consider the same in the right perceptive prayed for the review of the judgment in question.

11. It is thus noted that by way of the Review Application, the plaintiffs are endeavoring for a fresh rehearing of the second appeal on merits once again by re-agitating the issues already canvassed by them in the second appeal wherein, all the issues put forth by them had been considered and determined one way or the other. Admittedly, the documents projected by the plaintiffs in the interlocutory application had not been marked in the suit. Therefore, when the plaintiffs had not endeavored to place the said documents for consideration in the main suit, there is no need on the part on the courts to consider the same for upholding the plaintiffs' case and on that score, the plaintiffs cannot be allowed to find fault with the Courts below as well as this Court. When it is found that this Court by way of the judgment and decree in question had considered the rival contentions put forth by the respective parties as regards the suit property and assessed the materials placed on record in detail by giving reasons for the acceptance or the refusal of the same one way or the other and thereby determined that the plaintiffs are not entitled to seek and obtain the reliefs as prayed for on the ground that the



plaintiffs had failed to establish their title, possession and enjoyment of the suit property as put forth by them and on the other hand, noted that, it is only the first defendant Panchayath, who has been in the possession and enjoyment of the suit property by exercising control and management over the same by way of lease etc., and also further noted that despite the denial of title of the plaintiffs to the suit property on the part of the defendants, still the plaintiffs having failed to seek the relief of declaration of title to the suit property as per law, on that score also discountenanced the reliefs prayed for by the plaintiffs in the suit. In such view of the matter, when the judgment in question does not suffer from any mistake or error apparent on the phase of the record, the same does not required to be reviewed for the reasons projected by the plaintiffs as the said reasons had already been considered and determined by this Court in the judgment sought to be reviewed and the plaintiffs are found to have laid the present review application only for the purpose of re-hearing the merits of the Second Appeal once more by urging the same points one way or the other and when this Court had considered all the materials placed on record in the right perspective by giving reasons with reference to the same and thereby determined the issues involved between the parties and finally holding that the second appeal levied by the plaintiffs is devoid of merits, accordingly chose to dismiss the same. No other sufficient cause is also projected for reviewing the judgment in question.

12. Learned counsel for the Review applicants, in support of his contentions, placed reliance upon the decisions reported in

1. 2004 (1) SCC 769 [Rame Gowda (dead) by LRs Vs. M.Varadappa Naidu (dead) by Lrs and another]
2. 2004 (3) CTC 270 [The Executive Officer , Kadathur Town Panchayat, Harur Taluk, Dharmapuri District Vs. V.Swaminathan and others]
3. 1973 (2) SCC 358 [M.Kallappa setty Vs. M.V.Lakshminarayana Rao]
4. 2009 (5) SCC 162 [Nawab Shaqafath ali khan and others Vs. Nawab Imdad Jah Bahadur and others]

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

13. In this connection, the principles of law outlined by the Hon'ble Apex Court in the decision reported in 2013 (8) SCC 320 [Kamlesh Verma Vs. Mayawathi and Others], are taken into consideration.

14. In the light of the abovesaid factors, I do not find any merits in the Review Application. The Review Application is found to have been levied only for a rehearing the second appeal



once again by urging the same points already canvassed and determined by this Court and in such view of the matter, the Review Application is found to be devoid of merits.

15. In conclusion, the Review Application is dismissed. Consequently, connected miscellaneous petition, if any is, is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.Subordinate Judge,
Mettur.

2.The District Munsif Judge,
Mettur.

Copy To:
The Section Officer,
VR Section,
High Court, Madras - 104.

+1cc to Mr.V.Bhiman, Advocate, S.R.No.24402

Review Application No.65 of 2019
in
S.A.No.2083 of 2004

VG II(CO)

RRS (30/05/2019)