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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 05.02.2021

PRONOUNCED ON: 12.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

Rev.Appln.No. 131 of 2020 against S.A.No.675 of2019
and
CMP.No. 14720 of 2020

Chennai Garr Tech Ltd.,
Rep. by its Director
No.111, 3B, "Z" Block,
13th Street, Anna Nagar,
Chennai - 600 040.

... Petitioner/1st Respondent

Vs

1. B.R.R. Holdings Pvt. Ltd.,
Represented by its Director,
Plot No. 392, HMT Hills,
2nd Venture, opposite of JNTU College
Kulkatpatty,
Hyderabad - 500 072.
2. B.S.J.R.Holdings Pvt. Ltd.,
Rep. by its Director,
H.No. B55, Flat No. 202
Sri Vaishnavi Vihar,
Vengatarao Nagar, S.R.Nagar Post,
Hyderabad 500 038.
3. Bhima Agro Farms Pvt. Ltd.,
Rep. by its Director,
H.No.2-13/31, S.S. Nagar,
opposite Hyder Nagar,
Hyderabad 500 072.
4. B.R.N.R. Holdings Pvt. Ltd.,
Rep. by its Director,
H.No.1-11/195, Flat No. 503,
Vema Kamala's Pramila Rao Residency,
Shamlal Buildings, Begumpet,
Hyderabad 500 018

... Respondents/Appellants



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5. Rukmani Devi
W/o. D.Kulasekaran
No.51, R.A. Flats, Sashtri Nagar,
Ponniamman Medu, Kolathur
Chennai - 600 110.

... 5th Respondent/2nd Respondent

6. D.Kulasekaran
S/o. Dhanakoti Naicker
No. 51, R.A. Flats, Sashtri Nagar,
Ponniamman Medu
Kolathur,
Chennai 600 110.

... 6th Respondent/3rd Respondent

PRAYER: Review Application filed under Order XLVII Rule 1 of Code of Civil Procedure read with Section 114 of CPC, to review the Judgment made in S.A.No. 675 of 2019 dated 28.05.2020.

Prayer in S.A.No. 675 of 2019 : Second Appeal filed under Section 100 of the code of Civil Procedure to set aside the judgment and decree dated 02.04.2019 in A.S.No.7 of 2010 on the file of the Mahila Court, Chengalpattu, confirming the judgment and decree dated 27.10.2009 in O.S.No.385 of 2009 on the file of the Subordinate Court, Tambaram.

For Petitioner : Mr. P.L. Narayanan

ORDER

This Application has been filed by the first respondent in S.A.No. 675 of 2019 seeking review of the Judgment dated 28.05.2020.

2. In the grounds seeking review, it had been stated that the distinction between Sections 14(1) and 14(2) of Hindu Succession Act, 1956 as stated by this Court would require reconsideration in view of the decision of the Hon'ble Supreme Court reported in 2010 (9) SCC 602 [Gaddam Ramkrishnareddy and others Vs. Gaddam Remireddy and another].

3. A further ground that had been stated was with respect to arguments which were advanced projecting that if the settlement made in favour of Saradambal was for the maintenance in future, then that would have been spelt out in the document and something which has not been spelt out had been culled out by the Court. In this connection, reliance was made on the decision of the Hon'ble Supreme Court in 1989 Supp (1) SCC 487 [Provash Chandra Dalui Vs. Biswanath Banerjee].

4. A further ground was taken that the observation of the Court that Saradambal was without any property and therefore



the suit property was a provision for her right to reside in the property was not in consonance with the records of the case.

5. Another ground which had been taken was that once the third respondent was held to be the adopted son of Saradambal and Danakoti Naicker, then the natural inference should have been that the property would vest in his hands in accordance with Ex.A-1.

6. A final ground was taken with respect to the issue of limitation and it had been stated that the law of limitation is applicable to the plaintiff in a suit and not to the defendant.

7. Heard Mr. P.L. Narayanan, learned counsel for the Review Applicant.

8. The learned counsel again reiterated the grounds as raised in the Review Application and also stated that the observation of the Court that the consideration had been received by the third respondent Kulasekaran was also not based on records since there was no direct evidence for the same.

9. I have carefully considered the arguments advanced.

10. Section 114 of the Code of Civil Procedure provides for Review against a decree or order from which an Appeal can be preferred but had not been preferred. Order XLVII of the Code of Civil Procedure provides for review of a Judgment.

11. In this Review Application, the primary grievance has been with the interpretation given by the Court with respect to the applicability of Section 14(1) or Section 14(2) of the Hindu Succession Act, 1956.

12. Arguments had been advanced during the hearing of the Second Appeal and the decision was based on the pleadings and oral and documentary evidence. The scope of a Second Appeal is also quite narrow where a substantial point of law alone had to be determined. It is settled principle that under the guise of a Review Application, the entire issues cannot be reagitated.

13. In (1997) 8 SCC 715 [Parsion Devi and Others Vs. Sumitri Devi and Others], the Hon'ble Supreme Court has held as follows:-

"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying



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the court to exercise its power review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has limited purpose and cannot be allowed to be "an appeal in disguise.

10. Considered in the light of this settled position we find that Sharma, J. clearly over-stepped the jurisdiction vested in the court under Order 47 Rule 1 CPC. The observation of Sharma, J. that "accordingly", the order in question is reviewed and it is held that the decree in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory injunction were provided" and as such the case was covered by Article the scope of Order 47 Rule 1 CPC. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the later only can be corrected by exercise of the review jurisdiction. While passing the impugned order, Sharma, J. found the order in Civil Revision dated 25.4.1989 as an erroneous decision, though without saying so in so many words. Indeed, while passing the impugned order Sharma, J. did record that there was a mistake or an error apparent on the face of the record which not of such a nature, "Which had to be detected by a long drawn process of reasons" and proceeded to set at naught the order of Gupta, J. However, mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in exercise of the review jurisdiction. Recourse to review petition in the facts and circumstances of the case was not permissible. The aggrieved judgment debtors could have approached the higher forum through appropriate proceedings, to assail the order of Gupta, J. and get it set aside but it was not open to them to seek a "review of the order of petition. In this view of the matter, we are of the opinion that the impugned order of Sharma, J. cannot be sustained and accordingly accept this appeal and set aside the impugned order dated 6.3.1997."

14. In (2008) 11 SCC 107 [T.Thimmaiah (dead) by Lrs. Vs. Venkatachala Raju (dead) Lrs.], the Hon'ble Supreme Court has



held as follows:-

"2. During the course of hearing, the learned counsel for the appellant has pointed out that a bare perusal of the order in review would reveal that it is based on a complete reappreciation of the matter on facts and the provisions of Order 47 Rule 1 of the Code of Civil Procedure which would govern an application for review, have been completely ignored. It has been submitted by the counsel that the Single Judge had, in the first Judgment, examined the facts and dismissed the appeal and on a reconsideration of the same facts, had allowed the same, which was not justified. We find merit in this plea. From a bare perusal of the Judgment in review, it is clear that the principles laid down under Order 47 Rule 1 CPC have been completely ignored. We accordingly allow the appeal, set aside the order in review dated 26.2.2001 and dismiss the appeal in the suit. We, however, give liberty to the respondent herein to challenge the Judgment dated 16.2.1999, if so advised."

15. In (2018) 4 SCC 587 [Sivakami and Others Vs. State of Tamil Nadu and Others], the Hon'ble Supreme Court has held as follows:-

"18. The scope of the appellate powers and the review powers are well defined. The power of review under Order 47 Rule 1 of the Code of Civil Procedure, 1908 is very limited and it may be exercised only if there is a mistake or an error apparent on the face of the record. The power of review is not to be confused with the appellate power. The review petition/application cannot be decided like a regular intra court appeal. On the other hand, the scope of appeal is much wider wherein all the issues raised by the parties are open for examination by the Appellate Court.

19. A fortiori, what was not decided in appeal by the Division Bench could not be decided by the Division Bench while deciding the review application. It is for this reason, we are also constrained to set aside the review order."

16. The ratio laid down are binding. To repeat, no error on the face of the record has been pointed out in the grounds of review.



17. The review applicant had not pointed out errors on the face of record, but rather had stated that an alternate finding could have been given. If that is the grievance of the review applicant, then it would only be advisable that an Appeal is filed questioning the Judgment under review.

18. I am afraid that the review applicant is calling upon the Court to re-examine the same issues which have already been decided and Judgment pronounced.

19. In view of these facts, I am not able to concur with the statement that the Judgment should be reviewed, rather, I hold that the applicant may file an appeal.

20. The Review Application is dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

vsg

To

1. The Judge Mahila Court,
Chengalpattu.
2. The Subordinate Judge,
Tambaram.
3. The Record Keeper,
VR Section, High Court, Madras.

Rev.Appln.No. 131 of 2020
and
CMP.No. 14720 of 2020

AK(CO)
GMY(02/08/2021)