

C.R.P.(NPD)No.993 of 2019
&
C.M.P.No.1081 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27.07.2020

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(NPD).No.993 of 2019
and
C.M.P.No.1081 of 2020

Vasantha

... Petitioner

Vs

1.Bharatvaj

2.Janakidevi

... Respondents

Prayer : Civil Revision petition filed under Article 227 of the Constitution of India To set aside the fair and decreetal order dated 27.11.2018 made in I.A.No.11 of 2017 in O.S.No.13 of 2004 on the file of Principal District Judge, Villupuram and decree dated 31.08.2016 in O.S. No.13 of 2004.

For Petitioner : Mr.S.Prabhakaran Senior counsel
for
Mr.S.Conscious Ilango

For Respondents : Mr.N.Suresh

ORDER

The present Civil Revision Petition has been directed against the dismissal of the review petition filed by the petitioner.

2. The short point is that the Trial Court passed the judgment on the ground that Ex.A9 which is a WILL does not contain the particulars of Item – I of the property. Therefore, the relief against Item– I of the property was negatived and in respect of items 2 and 3 relief was granted in favour of the petitioner. It is the case of the petitioner that he has filed the very same document namely the Will in original -Ex.B.5 which contains all the details of Item-1 of the property. While copying from the original, the first item was omitted to be typed. The missing portion reads as under:

“புஞ்சை சர்வே நெம்பர் 264-ல் வடபுறம் புஞ்சை சர்வே 44 ஆம் நெம்பரில் 3.80”

3. But the above portion is available in Ex.B.5 original WILL. The Court by not looking into the relevant document and without appreciating the document in proper perspective has passed an order. According to the learned Senior Counsel, the judgment passed is error apparent on the face of the record. Had the relevant document in original been looked into, it could have changed the course of the judgment.

4. On the other hand, the learned counsel for the respondent would contend that it is a common judgment. If at all the parties aggrieved, they can file only an appeal and they are not entitled to review the judgment on this

ground. Further, the review is filed only against the judgment in respect of his suit alone, whereas it is a common judgment. The review should have been filed against all the parties. The learned Senior Counsel appearing for the petitioner would rely on the judgment of the Hon'ble Supreme Court reported in

1. Rajender Singh vs. Lt.Governor, Andaman & Nicobar Islands and Others, 2005 13 SCC 289
2. Lily Thomas and Others vs. Union of India and Others, 2000 6 SCC 224
3. S.Nagaraj and Others vs. State of Karnataka and Another, 1993 SUPP (4) SCC 595.

5. The learned counsel for the respondent would rely on

- 1.Kamlesh Verma vs. Mayawati & Others, 2013 4 CTC 882
2. Haridas Das vs. Smt. Usha Rani Banik and others, 2006 2 CTC 321
- 3.K.M.Karuppana Gounder (died) & others vs. The Revenue Divisional Officer, Periyar District, Erode & Others, 2013 5 CTC 146.

6. In addition to this, the learned counsel for the respondent would also submit that he has filed five appeals against the judgment in so far it negatives the claim in respect of Item 2 and 3 of the suit schedule property vide ASSR.Nos.49051,49053,49061,499065 and 499966 of 2017.

7. I have considered the submissions.

8. It is well settled law that review is maintainable only on the three specific grounds laid in Or.47 R.1 of C.P.C. It cannot be exercised on the ground that the decision was erroneous on merits. That would be the province of Court of appeal. Similarly, when two views are possible on the construction of the document also review is not maintainable. In the guise of review, a matter cannot be reopened and reargued on the same points argued earlier. The principles of review has been laid down by the Hon'ble Supreme Court in the case of Kamlesh Verma vs. Mayawati & Others, 2013 4 CTC 882 as under:

“...

16) Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

A) When the review will be maintainable:-

(i) Discovery of new and important matter or

evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in Chhajju Ram vs. Neki, AIR 1922 PC 112 and approved by this Court in Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulouse Athanasius & Ors., (1955) 1 SCR 520, to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India vs. Sandur Manganese & Iron Ores Ltd. & Ors., JT 2013 (8) SC 275.

B) When the review will not be maintainable:-

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected

but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.

9. In the instant case the Trial Court based its judgment on the basis of WILL. The certified copy of the said WILL was marked as Ex.A.9 by the plaintiff and the original as Ex.B.5 by the defendant. It is pertinent to reiterate that Ex.B.5 is the original WILL itself. While passing the judgment the contents of Ex.A.9 was taken into consideration wherein the following portions is found missing.

“புஞ்சை சர்வே நெம்பர் 264-ல் வடபுறம் புஞ்சை சர்வே 44 ஆம் நெம்பரில் 3.80”

The above missing portion is found in the original WILL marked as Ex.B.5.

But relying on the contents operative portion reads thus:

“66. The plaintiff/D.19 claims her title for the suit items 1 to 3 through the Ex.A9 Will. On perusal of Ex.A.9 along with the plaint, it clarifies that the suit item Nos.2&3 only shown in Ex.A.9 along with the other properties which are all claimed by the plaintiff in the plaint. Therefore the plaintiff/D.19 is entitled for item No.2 & 3 and not entitled for item No.1 of the suit properties in O.S.13/2004. Hence it is concluded that the suit properties item No.2 & 3 only belongs to the plaintiff and she is entitled for possession of item No.2& 3 only and this issues are answered accordingly.

Had the Court considered the relevant document in original vide Ex.B.5 the judgment might have taken a different course. It does not require any further argument and does not lead to deciding a question of law, much less complicated question of law. It will amount to setting right the error apparent on the face of the record. The judgment, thus, error apparent on the face of the record.

10. The Hon'ble Supreme Court in ***Haridas Das vs. Smt. Usha Rani Banik and others***, 2006 2 CTC 321 has held as under:

“ 14. In Meera Bhanja v. Smt. Nirmala Kumari Choudary [AIR 1995 SC 455] it was held that :

"It is well settled law that the review proceedings are not by way of an appeal and have to be strictly

confined to the scope and ambit of Order XLVII, Rule 1, CPC. In connection with the limitation of the powers of the Court under Order XLVII, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleshwar Sharma v. Aribam Pishak Sharma speaking through Chinnappa Reddy, J. has made the following pertinent observations:

“ It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to be exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merit. That would be in the province of a court of appeal. A power of review is not to be confused

with appellate power which may enable an appellate Court to correct all manner of error committed by the Subordinate Court."

11. In ***Rajender Singh vs. Lt.Governor, Andaman & Nicobar Islands and Others, 2005 13 SCC 289:***

"15.....The High Court, in our opinion, is not correct in overlooking the documents relied on by the appellant and the respondents. In our opinion, review jurisdiction is available in the present case since the impugned judgment is a clear case of an error apparent on the face of the record and non- consideration of relevant documents. The appellant, in our opinion, has got a strong case in their favour and if the claim of the appellant in this appeal is not countenanced, the appellant will suffer immeasurable loss and injury. Law is well-settled that the power of judicial review of its own order by the High Court inheres in every Court of plenary jurisdiction to prevent mis-carriage of justice.

16. The power, in our opinion, extends to correct all errors to prevent miscarriage of justice. The courts should not hesitate to review its own earlier order when there exists an error on the face of the record and the interest of the justice so demands in appropriate cases. The grievance of the appellant is that though several vital issues were raised and documents placed, the High

Court has not considered the same in its review jurisdiction. In our opinion, the High Court's order in the revision petition is not correct which really necessitates our interference."

12. A Division Bench of this Court in ***K.M.Karuppana Gounder (died) & others vs. The Revenue Divisional Officer, Periyar District, Erode & Others, 2013 5 CTC 146*** has held thus:

"15. The Court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used in Order 47, Rule 1 C.P.C. Court may allow a review on three specified grounds, viz., (1) discovery of new and important matter or evidence, which after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed or order was made; (2) mistake or error apparent on the face of the records; or (3) for any other sufficient reason. An error can be said to be one apparent on the face of the record only when such error is patent and can be located without any elaborate argument without any scope for any controversy with regard to such error, which as if, at a glance stares at the face.

13. The consistent findings and ratio laid down by the Hon'ble Supreme Court leads this Court that the present case is one falls under the head error

apparent on the face of the record and thereby reviewable.

14. In so far as the contention of the respondent that he has preferred appeals against the common judgment is concerned, the Code of Civil Procedure does not prohibit filing of review by other party. Filing of appeal by one party does not bar the other party from filing a review. In the instant case the appeal filed in the year 2017 is yet to be numbered. Further the petitioner is not the respondent in all these appeals to be numbered. Sub Rule (2) of Rule 11 of Or.47 C.P.C requires the party filing review to place the fact before the Appellate Court. Therefore, some of the parties filing appeal is not a bar for filing review. In so far as the common judgment is concerned, the rights of the parties are not interconnected as there 5 suits and the petitioner is a defendant is only one suit. Even assuming that the relief sought for is interconnected, the Trial Court will take the issue, when review is granted. The procedure laid down under rule 4 & 8 of Or.47 C.P.C would be adhered. Hence the apprehension of the respondent is misplaced.

15. In view of the discussions above, this Court is of the considered opinion that the order passed in I.A.No.11 of 2017 in O.S. No.13 of 2004 dated 27.11.2018 on th file of the Principal District Judge, Villupuram is not

sustainable and accordingly set aside. The Trial Court is directed to review its judgment taking into consideration Ex.B.5. It is made clear that, in that process, the Trial Court shall strictly adhere to Rules 4 & 8 of Or.47 C.P.C and take a conscientious decision exercising its discretion in the matter of reopening and hearing the parties concerned.

16. It is also pertinent to make an observation that petitioner is an octogenarian and the respondent a nonagenarian. It is desirable to conclude the proceedings at the earliest, so that either of them will enjoy the fruits during their life time.

The Civil Revision Petition is disposed of with the above observation and direction. No costs. Connected miscellaneous petition is closed.

सत्यमेव जयते

27.07.2020

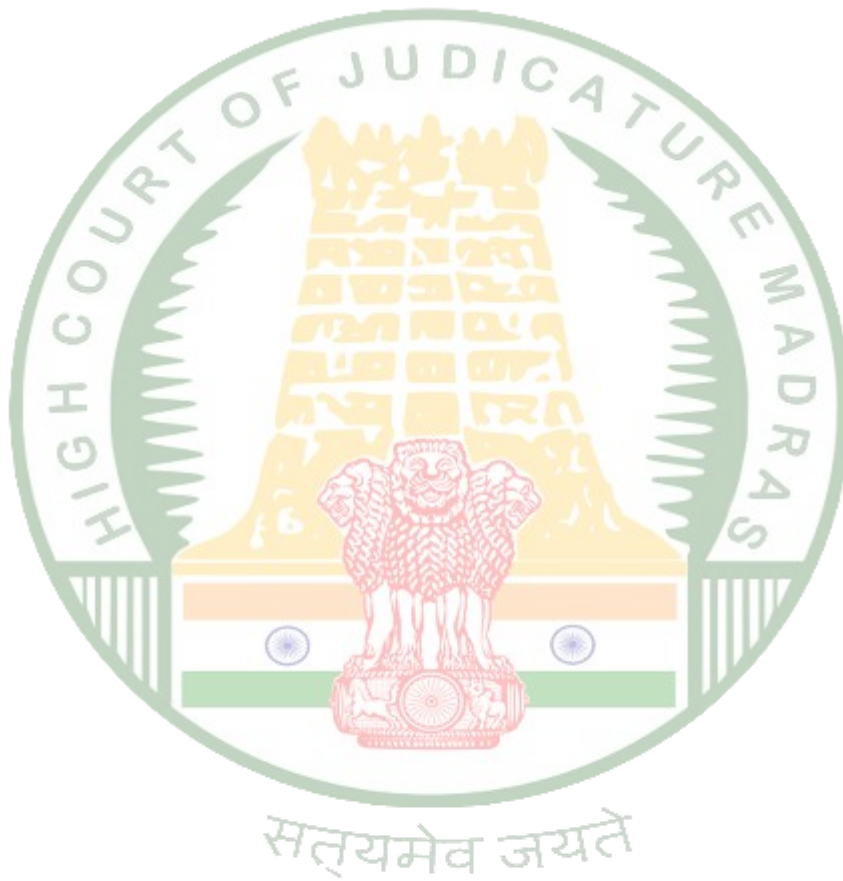
Index : Yes / No
Internet : Yes / No
Speaking/ Non Speaking Order

To
The Principal District Judge, Villupuram

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M.GOVINDARAJ, J.

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