

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2020

CORAM

THE HONOURABLE Mrs.JUSTICE **PUSHPA SATHYANARAYANA**

Rev.Appl.No.45 of 2016

in

S.A.No.200 of 2013

K.S.Kaliappan

Vs

...Petitioner

1. N.Dharmalingam

2. A.A.Vasudevan

3. P.M.Yoganathan

4. Minor P.Y.Raguprasad,

Rep by his Natural Guardian and Father P.M.Yoganathan

5. N.Senniappan

6. Pavayiammal

...Respondents

Prayer: Review petition filed under Section 114 and Order 47 Rule 1 of C.P.C against the judgment and decree dated 29.10.2015 made in S.A.No.200 of 2013 on the file of this Court.

For Petitioner : Mr.M.V.Venkateseshan

ORDER

The Review Petition is directed against the judgment and decree passed by this Court in S.A.No.200 of 2013 dated 29.10.2015.

2. The learned counsel, who appeared for the review petitioner endeavoured to make out an error apparent on the face of the record by stating that the second respondent had sold her half share in the property even in the year 1987 to one Vedanayagam and that she is entitled to only half a share and that has not been taken note of by this Court.

3. The second point was that in a suit for partition filed by the review petitioner in O.S.No.283 of 1982 , which was originally dismissed by the trial Court, but decreed in the lower appellate Court, the review petitioner has the right or title over the property. But, even in the grounds of review, it has been admitted in ground No.2 that the above fact was inadvertently could not be placed before this Court while making submissions in the Second Appeal.

4. The other grounds of fraud and collusion, though was already dealt with by this Court, is not correct according to the review petitioner. These are the main grounds urged by the learned Counsel for the review petitioner.

5. It is well settled principle that a review can be laid only on a glaring error apparent on the face of the judgment or order. A mere change or addition of grounds, cannot be allowed at the stage of review. If the above settled principles are applied to the facts of the case, this Court is of the considered view that the petitioner has not made out any case for entertaining the present review petition.

6. Any discovery of a new important matter or evidence, which after due exercise of diligence which is not within the knowledge of the petitioner or could not be produced by him or any mistake or error apparent on the face of the record is available, then a review petition can be entertained.

7. It is also worthwhile to press into service the decision in **Manoharan vs. State** reported in **2019 SCC On-line 1433**. Paragraph 19 of the said decision, is extracted hereunder:

"19. The above cited decision was reiterated in Mukesh v. State of (NCT of Delhi), where also similar restrictive principles were applied and re-affirmed while considering the scope of review in death penalty cases. Reliance was placed on the dictum in Kamlesh Verma v. Mayawati, , prescribing that Courts should refrain from re-appreciating the entirety of evidence only to arrive at a different possible conclusion, besides illustrating an inexhaustible list of instances where

review shall not be maintainable. The relevant part reads as follows:

"20.2. 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 reheard 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."

8. In the light of the above decision, the review petitioner cannot be allowed to reurge the case on merits to effectively seek re-appreciation of evidence, when the matter has already been decided earlier. Therefore, there is no merit in the review petition and the same is dismissed, as bereft of any merit.

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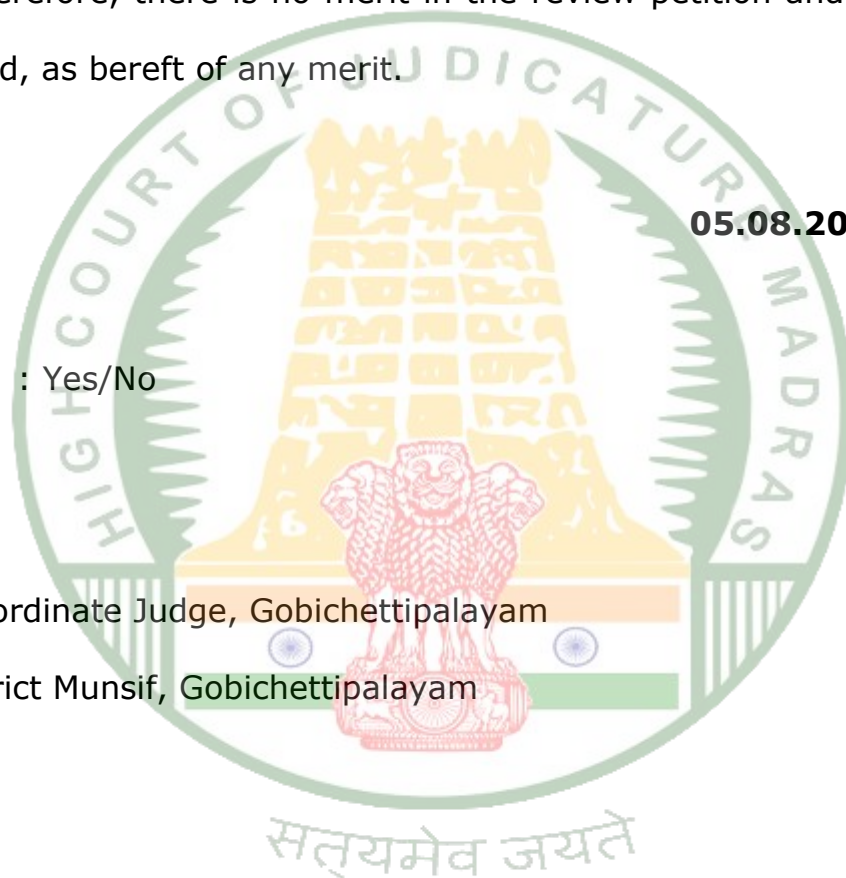
Index : Yes/No

Asr/srn

To

1.The Subordinate Judge, Gobichettipalayam

2.The District Munsif, Gobichettipalayam



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PUSHPA SATHYANARAYANA, J.

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