

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

REV.APLN.No.184 of 2018

Suseela Ammal(Died)

1.B.Ramesh

2.G.Prema

3.S.Kasturi

4.D.Sathya

5.C.B.Jayanthi

6.B.Sandhiya

..Appellants

VS.

1.Sarojammal(Died)

2.Sulochanammal(Died)

3.A.Vijayabharathi

4.S.Ravindran

5.Girija

6.S.Geetha

7.J.Manohar Reddy

8.Janathana Reddy

9.J.VSuryanarayana Reddy.

..Respondents

सत्यमेव जयते

Review Application filed under Order 47 Rule 1 of C.P.C, to review the judgment and decree dated 28/02/2017 made in A.S.No.630/2008 on the file of this Court.

For Appellant : Mr.P.Bagyalakshmi

For Respondents : Mr.T.P.Manoharan,
Senior Counsel
for Mr.T.M.Naveen for RR3 & 4
Mr.J.V.Suraya Narayana Reddy-
party in person for R9.

J U D G M E N T

The review petition is filed with a prayer to review the judgment and decree passed in A.S.No.630 of 2008 dated 28.02.2017.

2. The learned counsel appearing on behalf of the review petitioners sterroneously contended that there is an error very apparent in the judgment and therefore, the review of the judgment and decree passed in A.S.No.630 of 2008 is essential. In order to substantiate the grounds raised in the review petition, the learned counsel for the review petitioners elaborated the facts and circumstances and stated that the oral partition between the parties to the original suit is admitted by the plaintiffs themselves in the plaint. When the plaintiffs in the plaint in clear terms admitted the

oral partition, then there is no reason to deny the oral partition effected between the parties, during the year 1970. Though the plaintiffs themselves admitted the oral partition in the plaint, this Court has not considered nor taken into account the effect of oral partition conceded by the plaintiffs in the plaint itself. The learned counsel for the review petitioners reiterated that in Schedule A, B, C and D of the suit schedule property, the partitions are not effected in accordance with law, there is a discrepancy. Such discrepancy arose on account of the fact that the oral partition admitted by the plaintiffs in the plaint, had not been taken into consideration by this Court, at the time of deciding the appeal suit. Relying on the said oral partition, with reference to admission made by the plaintiffs in the plaint, the learned counsel for the review petitioners states that the order has to be reviewed by this Court, by considering the oral partition admitted by the plaintiffs before the Trial Court.

3. The review petitioners have raised other grounds, which are all, with reference to certain facts and circumstances and regarding the manner, in which, the partition is effected.

4. The learned Senior Counsel appearing on behalf of the respondents 3 and 4 disputed the said contention of the review petitioners mainly on the ground that the scope of the review petition is limited and re-appreciation of facts and circumstances as well as the findings made in the appeal suit is impermissible. The scope being limited, this Court cannot re-appreciate the findings already made by this Court and the merits raised regarding the facts cannot be re-written in a review petition. In support of the said contention, the learned Senior Counsel cited the judgment of the Hon'ble Supreme Court of India in the case of **STATE OF WEST BENGAL AND OTHERS vs. KAMAL SENGUPTA AND ANOTHER reported in 2008 8SCC 612**, wherein the Apex Court made an observation as follows:

22. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of

the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(i) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.

5. In the case of **MEERA BHANJA(SMT) vs. NIRMALA KUMARI CHOUDHURY reported in (1995) 1SCC 170**, the Hon'ble Supreme Court held as follows:

8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, 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 Tuleswar Sharma v. Aribam Pishak Sharma [(1979) 4 SCC 389 : AIR 1979 SC 1047] , speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)

"It is true as observed by this Court in Shivdeo Singh v. State of Punjab [AIR 1963 SC 1909] , 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 the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or 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 merits. That would be 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 errors committed by the subordinate court."

9. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error

apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale [AIR 1960 SC 137 : (1960) 1 SCR 890] wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.

15. *In our view the aforesaid approach of the Division Bench dealing with the review proceedings clearly shows that it has overstepped its jurisdiction under Order 47, Rule 1 CPC by merely styling the*

reasoning adopted by the earlier Division Bench as suffering from a patent error. It would not become a patent error or error apparent in view of the settled legal position indicated by us earlier. In substance, the Review Bench has reappreciated the entire evidence, sat almost as court of appeal and has reversed the findings reached by the earlier Division Bench. Even if the earlier Division Bench's findings regarding C.S. Plot No. 74 were found to be erroneous, it would be no ground for reviewing the same, as that would be the function of an appellate court. Learned counsel for the respondent was not in a position to point out how the reasoning adopted and conclusion reached by the Review Bench can be supported within the narrow and limited scope of Order 47, Rule 1 CPC. Right or wrong, the earlier Division Bench judgment had become final so far as the High Court was concerned. It could not have been reviewed by reconsidering the entire evidence with a view to finding out the alleged apparent error for justifying the invocation of review powers. Only on that short ground, therefore, this appeal is required to be allowed. The final decision dated 8-7-1986 of the Division Bench dismissing the appeal from Appellate Decree No. 569 of 1973 insofar as C.S. Plot No. 74 is concerned as well as the review judgment dated 5-9-1984 in connection with the very same plot, i.e., C.S. Plot No. 74, are set aside and the earlier judgment of the High Court

dated 3-8-1978 allowing the second appeal regarding suit Plot No. 74 is restored. The appeal is accordingly allowed. In the facts and circumstances of the case, there will be no order as to costs.

6. In the case of **DR.SUBRAMANIAN SWAMY vs.STATE OF TAMIL NADU AND OTHERS** reported in (2014) 5SCC 75, the Apex Court observed as follows:

52. The issue can be examined from another angle. The Explanation to Order 47 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") provides that if the decision on a question of law on which the judgment of the court is based, is reversed or modified by the subsequent decision of a superior court in any other case, it shall not be a ground for the review of such judgment. Thus, even an erroneous decision cannot be a ground for the court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed. (Vide Rajender Kumar v. Rambhai [(2007) 15 SCC 513 : (2010) 3 SCC (Cri) 584 : AIR 2003 SC 2095] .)

7. Relying on the judgment of the Hon'ble Supreme Court of India, the learned Senior Counsel made a submission that the scope of Order 47 Rule 1 cannot be expanded for the purpose of re-appreciating the evidence or for re-writing the facts and circumstances already recorded in the order passed in the appeal suit. Thus, the review petition is liable to be dismissed.

8. The review jurisdiction cannot be used as an Appellate Jurisdiction and as defined, the word "mistake" or "error" apparent on the face of the record. As per Order 47 Rule 1 CPC, the judgement may be opened to review, *inter alia*, if there is a mistake or an error apparent on the face of the records. An error which is not self-evident and has to be detected by a process of reasoning can hardly said to be an error apparent on the face of the record justifying the Court to exercise its power of review in exercise of the jurisdiction under Order 47 Rule 1 CPC. It is impermissible for an erroneous decision to be "re-heard and corrected" and there is a clear distinction between an erroneous decision and an error apparent on the face of the record.

9. With reference to the above principles, this Court is of the opinion that the judgment in A.S.No.630 of 2008, deals with the issues and one of the issue in the appeal suit is "whether there was a complete oral partition dividing all the properties by metes and bounds between the parties?". The issue is answered in the judgment passed in the appeal suit. While so, the said findings arrived, cannot be re-heard and corrected in the review proceedings under Order 47 Rule 1 of the Code of Civil Procedure. The Review Application has a limited purpose and cannot be allowed to be an Appeal in disguise. The case across the country held that where the grounds enumerated under Order 47 Rule 1 CPC is imminent and in the absence of satisfying the ingredients, no Review Application would lie. Further, it is stated that the Review Application is not a process of re-hearing of the whole matter, which had been earlier finally disposed of and the Review Application filed by the petitioners herein exactly attempts to do the same. The Review Application should be accepted or rejected has to be decided with reference to the grounds on which the review is permissible and not on the merits of the claim. The Review Application is for a correction of mistake and not for substitution of

views. A point which may be a good ground for an appeal need not be a good ground for an application for review. Thus, an erroneous view of evidence or of law is no ground for a review, though, it may be a good ground for an appeal.

10. This Court do not find any error apparent on the face of the record by this Court in the judgment and decree passed in the appeal suit. The Hon'ble Supreme Court also in the case of Dr.Subramanian Swamy cited supra in an unequivocal terms held that *"even an erroneous decision cannot be a ground for the Court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed"*. This being the categorical findings of the Supreme Court and the grounds raised in the present review petition is mainly on certain merits and regarding the findings arrived by this Court in the judgment passed in the appeal suit, this Court is of the considered opinion that the grounds raised in the review petition are insufficient

to interfere with the judgment and decree passed by this Court on 28.2.2017 in A.S.No.630 of 2008. Thus, this Court is not inclined to review the judgment and decree passed in the appeal suit. Accordingly, the review petition is devoid of merits and stands dismissed. No costs.

Index : Yes/No
Internet: Yes/No
Speaking order/Non-speaking Order
ssb

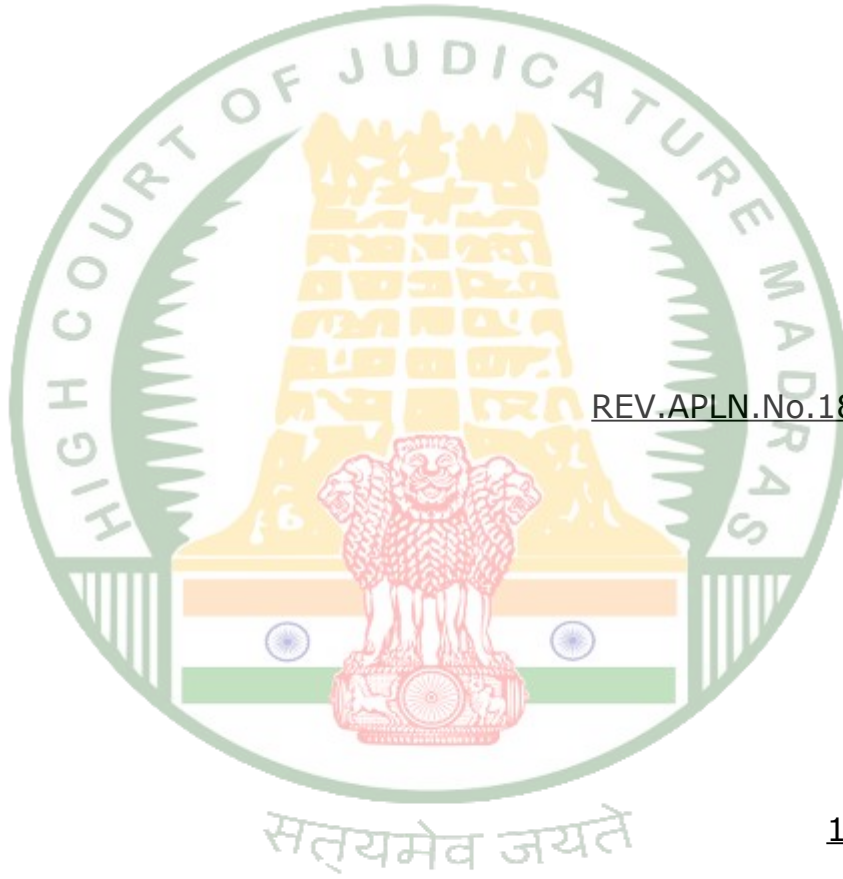
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S.M.SUBRAMANIAM, J.

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