

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.NO.2637 OF 2019

AND

C.M.P.NO.12811 OF 2019

S.K.Meenakshi Sundaram

.. Appellant

Vs.

M.N.Padmanabhan

.. Respondent

Prayer :

Civil Miscellaneous Appeal filed under Order 43 Rule 1(w) of C.P.C., against the Fair and Decreetal order dated 26.11.2018 made in I.A.No.193 of 2018 in O.S.No.19 of 2011 on the file of the learned Second Additional District Court, Salem.

For Appellant : Mr.N.Manoharan

For Respondent : Mr.T.Murugamanickam
Senior Counsel
For M/s.Zeenath Begum

J U D G M E N T

The Fair and Decreetal order dated 26.11.2018 made in I.A.No.193 of 2018 in O.S.No.19 of 2011 on the file of the learned Second Additional District Court, Salem, is under challenge in the present Civil Miscellaneous Appeal.

2. The appellant is the defendant in the suit and the respondents instituted a suit for Possession and the appellant filed a suit for cancellation of sale deed. The trial court delivered a common judgment on 10.8.2017. The plaintiff herein filed a Review Petition under Section 114 and 151 of C.P.C., to review the order passed by the trial Court on 10.8.2017 in O.S.NO.19 of 2011. The said Interlocutory Application to review the judgment was dismissed by the trial Court, against which, the present Civil Miscellaneous Appeal is filed.

3. The learned counsel appearing on behalf of the appellant mainly contended that the trial Court has committed an error with regard to the payment of balance sale consideration along with the interest. The respondents deliberately withdraw the balance sale consideration and therefore, the respondents are liable to compensate the appellant by paying interest at the rate of 12% per annum. With this grievance, the Review Application was filed. The trial Court considered the scope of the Review Petition under Order 47 Rule 1 of C.P.C., and further, considered the nature of grounds taken by the appellant for reviewing the judgment and rejected the application.

4. This Court is of the considered opinion that the power of review under Order 47 Rule 1 of C.P.C., is certainly limited. If there is an error apparent on record, then alone, the Court which passed the judgment, can review its own order and all other grounds raised on merits are to be adjudicated only in an appeal and not by filing a Review Petition. The scope of review has now been well settled and adjudication or re-appreciation of the grounds are impressible in a review application.

5. Considering the grounds taken in the review application by the appellant, this Court is of the considered opinion the the trial Court has rightly rejected the review application and there is no infirmity or perversity as such. However, the appellant is at liberty to take all the grounds in the appeal, which has already been filed against the judgment dated 10.8.2017. In other words, the appellant may raise all the grounds including the grounds raised the Review Petition in the appeal suit.

6. With these observations, the Fair and Decreetal order dated 26.11.2018 made in I.A.No.193 of 2018 in O.S.No.19 of 2011 on the file of the learned Second Additional District Court, Salem, stands confirmed and accordingly, the Civil Miscellaneous Appeal in C.M.A.No.2637 of 2019 stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kak

To

1. The Learned Second Additional District Court,
Salem.

+1cc to M/s.Zeenath Begum, Advocate, S.R.No.2910

+1cc to Mr.N.Manoharan, Advocate, S.R.No.3392

C.M.A.No.2637 of 2019

GP (CO)
CS/08/04/2021