



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

REV.APLC(MD)No. 1 of 2014

and

M.P.(MD)No.1 of 2014

in

C.R.P.(MD)1662 of 2013

Lakshmipathy

... Review Petitioner/Petitioner

Vs.

1.Subbiah @ Kadambur Jeyaraj

2.Vijaya @ Vijayalakshmi

3.Kannabiran

4.Chandrasekar

5.Pandiammal

6.Pandiaraj

... Respondents/Petitioners

Prayer: Review application has been filed under Order 47 Rule 1 r/w Section 114 of the Code of Civil Procedure to review the order dated 20.11.2013 passed in C.R.P.(MD)No.1662 of 2013.

Prayer in CRP(MD). 1662/ 2013 :

Civil Revision Petition is filed Under Article 227 of Constitution of India, praying this Hon'ble Court to set aside the order dated 12.08.2013 made in I.A. No. 85/2013 in O.S. No. 6/2012 on the file of the Court of First Additional District Sessions Judge, Thoothukudi.

For Appellant	: Mrs.J.Maria Roseline
For Respondents	: Mr.S.Siva Ilayaraja
	for R.1 and R.2
	: Mr.S.Selvakumar
	for R.4 and R.5
	: Mr.F.X.Eugene
	for R.6
	: No Appearance for R.3

ORDER

The above Review Application has been filed by the petitioner in C.R.P.(MD)No.1662 of 2013 to review the common order passed in C.R.P.(MD)Nos.1386 and 1662 of 2013, dated 20.11.2013.

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2. The petitioner, who is the plaintiff in O.S.No.6 of 2012, on the file of I Additional Sessions Court, Thoothukudi, filed an application in I.A.No.85 of 2013 under Order 6 Rule 17 of the Code of Civil Procedure to amend the plaint. The trial Court dismissed the application, against which, the plaintiff preferred the above Civil Revision Petition, which was also dismissed by this Court, by order dated 20.11.2013.

3. The plaintiff sought for amendment of the prayer. At the time of hearing the Civil Revision Petition, the learned Counsel appearing on either side admitted that the amendment petition was filed, after the commencement of the trial. This Court, taking into consideration the submissions made by the learned Counsel appearing on either side and also taking note of the fact that the amendment application has been filed at a belated stage, following the ratio laid down by the Honourable Apex Court in Sushil Kumar Jain Vs. Manoj Kumar reported in AIR 2009 SUPREME COURT 2544, dismissed the Civil Revision Petition. Now the petitioner has filed the above Review Application to review the order dated 20.11.2013 stating that the trial Court had only posted the suit for trial and the trial has not commenced yet.

4. The learned Counsel appearing for the respondents submitted that the plaintiff had served them the copies of the proof affidavit in April 2013 itself. Even assuming that the proof affidavit was not filed, the plaintiff sought for amendment of the plaint at a belated stage, (i.e.,) when the suit was admittedly posted for trial.

5. This Court, while dismissing the Civil Revision Petition, also took note of the fact that the defendants admitted in the written statement that they are entitled to the "C" schedule property and in spite of the same, the plaintiff did not file the application seeking for amendment of the plaint immediately. The finding with regard to the commencement of the trial is immaterial for the reason that the application for amendment was filed at a belated stage. Even assuming that the trial had not been commenced, since the amendment application was filed at a belated stage, the same cannot be entertained. That apart, the scope under Order 47 Rule 1 of the Code of Civil Procedure is very limited for reviewing the order. Only if there is an error apparent on the face of the record, this Court can interfere in the order.

6. The learned Counsel appearing for the respondents relied upon a judgment in N.Anantha Reddy Vs. Anshu Kathuria & Others reported in 2014(1) T.N.C.J. 144 (SC), wherein the Honourable Apex Court held as follows:



"9. A careful look at the impugned order would show that the High Court had a fresh look at the question whether the appellant could be impleaded in the suit filed by the respondent No.1 and, in the light of the view which it took, it recalled its earlier order dated 08.06.2011. The course followed by the High Court is clearly flawed. The High Court exceeded its review jurisdiction by considering the merits of the order dated 08.06.2011. The review jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the order/judgment does not call for review. The mistake apparent on record means that the mistake is self evident, needs no search and stares at its face. Surely, review jurisdiction is not an appeal in disguise. The review does not permit rehearing of the matter on merits."

7. Even the finding given by this Court with regard to the commencement of the trial was only based on the submissions made by the learned Counsel appearing on either side while hearing the Civil Revision Petition. Therefore, I do not find any error apparent on the face of the record warranting interference in the review application.

8. The review power may be exercised when some mistake or error apparent on the face of the record is found and the review power cannot be exercised on the ground that decision was erroneous on merits. The review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of the Code of Civil Procedure. An error on the face of the record must be such an error which must strike one on mere looking at the record and would require any long drawn process of reasoning on the points where there may be conceivable be two options. Similarly a rehearing of the matter is impermissible in law. Further it constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

9. In these circumstances, the review application is devoid of merits and the same is liable to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-IV)



To

The I Additional Sessions Judge,
Thoothukudi.

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COPY TO:

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.S.Siva Ilayaraja, Advocate SR.No. 76158
+1cc to M/S.S.Selvakumar, Advocate SR.No. 76712
+1cc to M/S.F.X.Eugene, Advocate SR.No. 76694
+1cc to M/S.J.Maria Roseline, Advocate SR.No. 76614

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