



Rev.Appl.No.201 of 2021
in C.R.P.PD.No.3456 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 10.08.2022

Delivered On : 23.08.2022

CORAM

THE HONOURABLE **MR.JUSTICE G.K.ILANTHIRAIYAN**

Rev.Appl.No.201 of 2021
in
C.R.P.PD.No.3456 of 2018
and
C.M.P.Nos.21095 & 21098 of 2021

1. Saraswathi
2. Madhi @ Gejavaradhan
3. Anbukkarasi
4. Sundhararasu
5. Latchumanan
6. Annapoorani
7. Sathiya
8. Thirumurugan
9. Ramesh

... Petitioners

Vs.

N.S.Nedunchezian @ Subramanian

... Respondent



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PRAYER : Review Application filed under Order XLVII Rule 1 r/w Section 114 of C.P.C., pleased to review the order 15.07.2021 passed in C.R.P.PD.No.3456 of 2018 on the file of this Hon'ble Court, by allowing this Review Application and to grant such other relief that this Hon'ble Court may deem fit.

For Petitioners : Mr.S.Subbiah, Senior Counsel for
Ms.Elizabeth Ravi

For Respondent : Mr.T.P.Manoharan, Senior Counsel for
Mr.T.M.Naveen

ORDER

This review application has been filed to review the order passed by this Court in C.R.P.PD.No.3456 of 2018 dated 15.07.2021, thereby, set aside the order in I.A.No.200 of 2016 in O.S.No.138 of 2015 on the file of the Principal Subordinate Court, Puducherry and reject the plaint in O.S.No.138 of 2015.

2. The petitioners have filed the suit to cancel the sale deed dated 05.07.2004, executed by them in favour of the respondent and also for permanent injunction in respect of the suit property. Pending suit, the respondent filed a petition for rejection of plaint and the same was dismissed.



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Aggrieved by the said order, the respondent preferred the revision petition before this Court in C.R.P.PD.No.3456 of 2018 and it was allowed by this Court by an order dated 15.07.2021 and the plaint in O.S.No.138 of 2015 was rejected.

3. Mr.S.Subbiah, the learned Senior Counsel appearing for the petitioners submitted that though the documents annexed to the plaint are produced by way of typed set, they would not be brought to the notice of this Court for consideration. It would be more appropriate to look into the facts and circumstances and other materials on record and in respect of the cause of action to institute the suit, not only the basis of the allegations made in the plaint, but also the documents produced along with the plaint have to be looked into. The subject property in the suit O.S.No.231 of 1998 on the file of the learned Additional Subordinate Court, Puducherry are completely different from the mortgage properties. It could be seen from the documents annexed in the plaint and unfortunately, it had not been brought to the notice of this Court. The respondent filed the suit in O.S.No.197 of 2015 on the file



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of the learned I Additional District Munsif, Puducherry, only as against the 2nd petitioner herein for permanent injunction and sustained cause of action giving rise to institute the present suit could not be said to be either barred under the law of limitation or there has been no cause of action for institution of the present suit. In fact, the cause of action, on account of the suit filed by the respondent is another cause of action to file the present suit. This fact was not considered by this Court as it was not brought for consideration. Therefore, the suit itself cannot be rejected on the ground that there was no cause of action. All the matters have to be necessarily adjudicated only upon the full fledged trial before the trial Court. The averments made in the plaint and the prayer sought for in the plaint can be considered only after conclusion of trial and entitlement of the prayer of re conveyance of the suit properties can be adjudicated only at the time of trial but not in the application filed for rejection of plaint.

4. He further submitted that the provision with reference to the Article 59 of the Limitations Act leading to a finding that the applicants ought to



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have filed a suit within a period of 3 years as per the Article 59 of the Limitations Act, is an error apparent on the face of it, as column 3 of Article 59 of the Limitations Act, does not say that the suit to cancel an instrument should be filed from the date of instrument, whereas what was provided therein was that the facts entitling the plaintiff to have the instrument cancelled, first become known to him. He further submitted that there is no drafting of the plaint, cleverly, the relief sought for is only in terms of the provisions contained under the Article 59 of the Limitation Act providing for the cancellation of an instrument. Therefore, the drafting of the plaint cannot be faulted and as such the finding is an error apparent on the face of the record.

5. In support of his contention, he relied upon the following judgments:-

1) K.Elango and others vs. The Secretary Bar Council of India reported in (2015) 6 CTC 90.

2) Nestore and another Vs. Regeena and Others reported in (2021) 1 LW 245.



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3) Jothibai Kannan and others Vs. S.Murali Sundaram

and others reported in (2021) 5 MLJ 304.

6. Per contra, Mr.T.P.Manoharan, learned Senior counsel appearing for the respondent contended that there is absolutely no error apparent on the face of the record and all the grounds raised by the petitioner can be considered only by way of appeal and these grounds cannot be considered for reviewing the order passed by this Court. 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. It has to be kept in view that an error apparent on the face of the record must be such an error which must strike one on mere looking at the record and would not require any long process of reasoning of points where there may conceivably be two opinions.

7. Heard the learned Senior counsel appearing for the petitioners and the learned Senior counsel appearing for the respondent.

8. The petitioners have filed a suit in O.S.No.138 of 2015 on the file of the learned Additional Subordinate Court, Puducherry, against the respondent



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to cancel the sale deed dated 05.07.2004, executed by them in favour of the respondent herein and also for permanent injunction in respect of the suit property. Pending suit, the respondent filed the application for rejection of plaint on the ground that the suit itself is clearly barred by limitation and there is no cause of action to file the present suit. The sale deed was executed by the petitioners jointly on 05.07.2004 in favour of the respondent. If the petitioners wanted to challenge the sale deed, they ought to have filed a suit within a period of three years from the date of execution of the sale deed, as contemplated under Article 59 of the limitation Act, whereas the present suit was filed only on 30.09.2015. According to the petitioner, on 24.02.1995, they borrowed money from the respondent by executing a mortgage deed. Thereafter, the respondent filed the suit of in O.S.No.231 of 1998 and the same was decreed by a judgment and decree dated 26.02.1999. In order to avoid the Court auction sale, the petitioners themselves executed the sale deed on 05.04.2004. The respondent also filed the execution petition in E.P.No.191 of 2001 and after execution of sale deed, the Court recorded full satisfaction and the execution petition was terminated on 02.07.2014.



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Thereafter, the respondent filed a suit in O.S. No.197 of 2015 for injunction on the strength of sale deed executed in favour of the respondent, in respect of the very same property as against the 2nd petitioner herein and he had duly contested the suit. However, the second petitioner herein had not filed any counter claim to set aside the sale deed. After a period of 11 years, the petitioners filed this present suit challenging the sale deed dated 05.07.2014.

9. When the suit summon was received by the petitioners in O.S.No.197 of 2015 filed by the respondent for injunction in respect of the subject property, they came to know that the respondent is not willing to retain the subject property in their favour. Therefore they were constrained to file the present suit, challenging the sale deed dated 05.07.2004.

10. As stated above, after the decree was passed in O.S.No.231 of 1998, the petitioners themselves had executed the sale deed, in order to avoid the Court auction sale, on 05.07.2004. Thereafter, it was recorded and the Court terminated the execution petition filed by the respondent in E.P.No.191 of 2001. Therefore, it would amount to clever drafting of plaint and it has



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created illusion of the cause of action. It should be nibbed in the bud so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression and determine whether the litigation is worth it or an abuse of process of Court.

11. On perusal of the plaint and documents relied upon, it is clear that the petitioner have admitted the execution of the sale deed dated 05.07.2004. The petitioners stated in their plaint that having good faith on the respondent, believing promise and undertaking given by him that he would reconvey the suit properties in their favour as and when they pay the debt with the interest due thereon, they executed the registered sale deed on 05.07.2004, without receiving a single paise towards sale consideration. Further the grounds raised by the petitioners in the review petition are nothing but appeal grounds, since there is no error apparent on the face of the record.

12. The learned Senior counsel for the petitioners relied upon the judgment of Hon'ble Division Bench of this Court in the case of **K.Elango & others vs. The Secretary, Bar Council of Tamil Nadu** reported in (2015) 6



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CTC 90, wherein, this Court held that there is nothing wrong in being wrong, provided there is willingness to set the wrong right, when an opportunity arises. This Court finds no wrong in the order passed by this Court and as such, the above said judgment is not applicable to this case.

13. While considering the review application, the legal principles settled down by the Hon'ble Supreme Court of India and by this Court that the review proceedings are not by way of an appeal and have to be strictly confined within the ambit of Order 47 Rule (1) of CPC, should be kept in mind. The review can be entertained only on the ground of error apparent on the face of the record and not on any other ground. There must be errors which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points when there may conceivably be two opinions. Under Order 47 Rule 1 of CPC, it is not permissible for any erroneous decision to be reheard and corrected. Therefore, the review is not a routine procedure. It is not permissible, unless this Court is satisfied that the material error manifest on the face of the order undermines its soundness or results in miscarriage of justice.



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14. In view of the above facts and circumstances, this Court finds no ground to review the order passed by this Court in C.R.P.PD.No.3456 of 2018 dated 15.07.2021. Accordingly, the review application stands dismissed and no orders has to be passed. Consequently, the connected miscellaneous petitions are closed.

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Index : Yes/No
Speaking order : Yes/No
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