



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.06.2013
CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

WEB COPY

Review Application (MD)No.53 of 2012
and
M.P(MD)Nos.1 to 3 of 2012

Chelladurai ... Petitioner/Appellant

Vs.

1.Sree Ranjini
2.Natarajan

... Respondents/Respondents

Prayer : Petition filed under Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure, to review the order dated 13.06.2012 in S.A.(MD)No.183 of 2011 passed by this Court.

SA(MD)No.183 of 2011:-

Second Appeal filed under Section 100 of Code of Civil Procedure against the Judgment and Decree dated 6/1/2011 passed in A.S.No.17/2010 and Cross Appeal Suit No.17/2010 on the file of the Court of the Subordinate Judge, Padmanabhapuram , in modifying the Judgment and Decree dated 12/01/2010 passed in O.S.No.216 of 2007 on the file of the Court of Additional District Munsif, Padmanabhapuram.

For Petitioner : Mr.G.R.Swaminathan

For Respondents : Mr.V.M.Bala Mohan Thampi for R.1

Mr.J.John Jeyakumar for R.2

* * * * *

ORDER

The first defendant in O.S.No.216 of 2007 on the file of the Court of Additional District Munsif, Padmanabhapuram, is the review applicant and he lost before the trial Court as well as in the appeal in A.S.No.17 of 2010 on the file of the Court of Subordinate Judge, Padmanabhapuram, wherein with certain modifications, a decree was granted. The second appeal filed by him in S.A.(MD)No.183 of 2011 was also dismissed by this Court on 13.06.2012 and the present Review Application has been filed to review the above said order.



2. The facts are narrated in detail in the impugned judgment in the second appeal and therefore, it is unnecessary to restate once again except to state a few facts which are necessary for the disposal of this Review Application thus:

(i) The trial Court has granted the relief to the legal representative of the plaintiff in respect of the suit 'C' schedule property, by ordering recovery of possession.

(ii) The lower appellate Court, on the basis of Exs.C.1 and C.2 - Advocate Commissioner's report and plan, found that 'C' schedule property is not measuring 70 cents, but only to the extent of 62.716 cents, which is shown as ABCD in Ex.C.2 and confirmed the finding of the trial Court that it is the property of the plaintiff. The lower appellate Court having found that 'C' schedule property measures only to the extent of 62.716 cents, has modified the decree to that extent and in other respects, confirmed the judgment and decree passed by the trial Court.

(iii) In the grounds of second appeal, it was urged that as per the Advocate Commissioner's report and plan marked as Exs.C.1 and C.2, the version projected by the plaintiff, on the face of it, is false and that there was no encroachment on the part of the review applicant/first defendant and he has also perfected his title in respect of the land admeasuring 4 acres 61 cents comprised in R.S.No.292/2B by adverse possession.

(iv) This Court, taking into consideration the substantial questions of law raised in the grounds of second appeal and other material documents available on record, found that the findings recorded by the lower appellate Court warrant no interference and accordingly, dismissed the second appeal, vide judgment dated 13.06.2012.

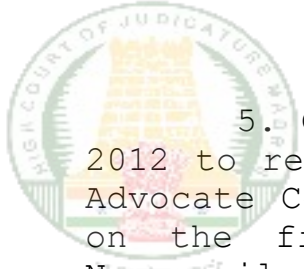
3. In the Review Application, the following grounds are raised:

"(a) This Hon'ble Court ought to have granted liberty in favour of the appellant to proceed against the 2nd respondent in O.S.No.2 of 2010 now pending on the file of the District Judge, Nagercoil.

(b) This Hon'ble Court ought to have exercised its jurisdiction available under order 41 Rule 33 of C.P.C. in order to render complete justice in view of the stand taken by the 2nd defendant."

(extracted as such)

<https://hcservices.ecourts.gov.in/> This Hon'ble Court, vide order dated 03.08.2012 ordered notice to the learned Counsel for the respondents who appeared in the second appeal.



5. On 28.08.2012, the review applicant filed M.P(MD)No.1 of 2012 to receive the copy of the plaint, written statement and the Advocate Commissioner's report and plan filed in O.S.No.2 of 2010 on the file of the District Judge, Kanyakumari District at Nagercoil, as additional evidence and on 03.09.2012, he filed M.P (MD)No.2 of 2012 to raise the additional grounds in the Review Application and M.P(MD)No.3 of 2012, praying for interim stay of further proceedings in E.P.No.53 of 2012, on the file of the District Munsif, Padmanabhapuram.

6. The learned Counsel for the review applicant/first defendant would contend that he is entitled to 4 acres and 42 cents and as per the judgment passed by the lower appellate Court and confirmed by this Court, he is having only 19 cents of land in excess of 4 acres and 42 cents, but, whereas the decree was granted in respect of 62.716 cents i.e., more than 19 cents of land and that the second respondent is in possession of more than 23 cents of land, to which, he is not entitled to and in this regard, the review applicant has also filed O.S.No.2 of 2010 on the file of the District Judge, Kanyakumari District at Nagercoil, against the respondents herein, praying for partition and separate possession of suit 'A' schedule property in R.S.No.292/2 admeasuring 14 acres and 42 cents or in the alternate, for fixing of boundaries in plaint 'B' schedule properties with its available area within the boundaries as per lie and as per the description in the gift deed dated 09.02.1962 and other consequential reliefs. In the said suit, the respondents who are arrayed as defendants, had also filed the written statements. The Advocate Commissioner was also appointed in I.A.No.442 of 2010 wherein it has been found that the review applicant is in possession of 14 acres and 42 cents and therefore, necessary clarification in the form of review is necessary as regards the actual possession of the land in the hands of the review applicant/first defendant.

7. The learned Counsel for the review applicant/first defendant also prays for leave of this Court to allow M.P(MD)Nos.1 to 3 of 2012.

8. Per contra, the respective learned Counsel for the respondents would submit that admittedly, the points now urged by way of additional grounds in the Review Application have not even been raised even at the time of filing the Memorandum of grounds of second appeal and even at the time of filing the Review Application and hence, it is not open to the review applicant to raise the said grounds at the time of arguments.

9. It is further contended on behalf of the respondents that the subsequent suit in O.S.No.2 of 2010 filed by the review applicant, was also dismissed for default and it is yet to be restored to file and therefore, the question of receiving the



pleadings and the Advocate Commissioner's report and plan filed in the said suit, does not arise and the same cannot be received as additional evidence and hence, prayed for the dismissal of this Review Application.

10. This Court paid it's best attention to the rival submissions and also perused the materials available on record.

11. A perusal of the Memorandum of grounds of second appeal would disclose that no ground has been raised relating to the pendency of O.S.No.2 of 2010 filed by the review applicant and that no submissions were made with regard to Exs.C.1 and C.2 marked in O.S.No.216 of 2007 on the file of the Additional District Munsif Court, Padmanabhapuram.

12. This Court, on a thorough perusal and consideration of entire materials available on record, has chosen to confirm the judgment and decree passed by the lower appellate Court.

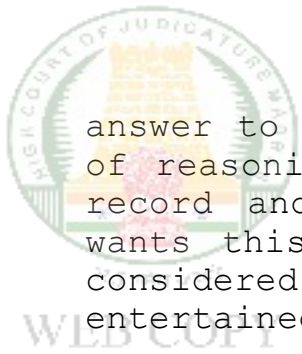
13. Even in the grounds of Review Application, the points now urged by the review applicant have not been raised and this Court has ordered notice on 03.08.2012 to the learned Counsel for the respondents in the second appeal and only on 03.09.2012, M.P (MD) Nos.2 and 3 of 2012 were filed.

14. It is very pertinent to point out at this juncture that the review applicant has filed O.S.No.2 of 2010 on the file of the District Judge, Kanyakumari District at Nagercoil, for partition and also for alternate relief and the pleadings have been completed in the said suit. However, for the reasons best known to the review applicant, who is the plaintiff in the said suit, the said suit came to be dismissed for default.

15. The grounds pleaded by the review applicant have not even been urged either in the grounds of second appeal or in the grounds of Review Application and by way of an afterthought, M.P (MD) No.2 of 2012 was filed to raise the additional grounds.

16. It is a settled position of law that it is not only a discovery of new important materials or evidence, that would entitle a party to apply for review, but the discovery of any new material or evidence and important matter must be one which was not within the knowledge of the party when the decree was passed. Admittedly, even at the time of filing the second appeal, O.S.No.2 of 2010 filed by the review applicant, is pending adjudication and in spite of that, necessary arguments have not been made.

17. It is also a trite law that where the grounds urged by the review applicant in the Review Application disclose that an



answer to the review sought for has to be detected by the process of reasoning, it cannot be an error apparent on the face of the record and under the guise of arguing the Review Application, wants this Court to rehear and correct the judgment and in the considered opinion of this Court, such kind of practice cannot be entertained.

18. Even as per the own admission of the review applicant, on the basis of subsequent development in the form of report of the Advocate Commissioner in the subsequent suit in O.S.No.2 of 2010, he seeks to review the impugned judgment in the second appeal and the same cannot be done in exercise of powers under Order 47 Rule 1 of the Code of Civil Procedure.

19. The review applicant has filed a comprehensive suit in O.S.No.2 of 2010 on the file of the District Judge, Kanyakumari District at Nagercoil, seeking the very same relief sought by him in the present Review Application and the learned Counsel for the respondents submitted that the said suit has also been dismissed for default and it is yet to be restored to file.

20. Therefore, in the light of the above factual aspects, coupled with the legal position, this Court is of the view that the present Review Application lacks merit and deserves to be dismissed.

21. In the result, this Review Application is dismissed. Consequently, the connected Miscellaneous Petitions in M.P(MD) Nos.1 to 3 of 2012, are also dismissed. No costs.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub-Assistant Registrar

To

1.The Subordinate Judge, Padmanabhapuram

2.The Additional District Munsif, Padmanabhapuram

COpy to:-

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai

+One cc to M/s.J.John Jayakumar, Advocate, SR.No.29588

+One cc to Mr.V.M.Balamohan Thambi, Advocate, SR.No.29779

rsb

RL/6c - 13/6/2013

ORDER MADE IN

Review Application (MD)No.53 of 2012

and

M.P(MD) Nos.1 to 3 of 2012

05 .06.2013