



**REV.APLC (MD) No.110 of 2014**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **25.03.2022**

C O R A M

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

**REV.APLC (MD) No.110 of 2014**

**and**

**M.P (MD) No.1 and 2 of 2014**

Madasamy

... Review Applicant/  
Appellant

Vs.

Pazhani

... Respondent/ Respondent

PRAYER: Review Application is filed under Order 47 Rule 1 r/w Section 114 of the Code of Civil Procedure, 1908, to as against the judgment and decree made in S.A(MD)No. 1115 of 2006 dated 14.03.2014.

For Review Applicant : Mr.A.Alaguram

For Respondent : Mr.J.Ashok

for M/s.Jeyapaul Associates

**ORDER**

The review application is filed under section 114 r/w Order 47 Rule 1 of CPC as against the judgment and decree passed in S.A(MD) No.1115 of 2006 dated 14.03.2014.



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2.This review application is filed by the appellant in the second appeal on the following grounds: -

- a)The finding of this court that the appellant/defendant received  $\frac{1}{2}$  share of the sale amount from his own brother/plaintiff and then only he paid Rs.1,03,325/-. The sale amount was with the court is a patent error not borne out by any documentary evidence;
- b)When Ex.A2 is a written instrument, the contention of the plaintiff that he subsequently paid the amount and did not obtain a receipt cannot be accepted at all, especially in view of wrong particulars in Ex. A3 telegram.

3.The second appeal was filed as against the judgement and decree in A.S.No.26 of 2006 dated 17.08.2006 passed by the learned Principal District Judge, Tirunelveli, reversing the judgment and decree in O.S.No.67 of 2005 dated 24.02.2006 passed by the learned Principal Subordinate Judge, Tirunelveli.

4.The second appeal filed by this petitioner in S.A. (MD) No.1115 of 2006 was admitted on the following substantial questions of law: -



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- a. Whether the lower appellate court is in right in the law in decreeing the suit for partition and separate possession of the suit property as prayed for in favour the respondent, while the respondent has categorically admitted in his pleadings that the suit property was registered in the name of the appellant in the court auction proceedings?
- b. Whether the lower appellate court is right in the law in thinking that mere admission of the execution of Ex. A2, alleged agreement, without admitting the contents of the same by the appellant, will prove that Ex. A2 is true, ignoring that Ex. A2 could not construed as a legally valid one since it does not satisfy the legal requirements of a valid document.

5.The second appeal was dismissed by this court by judgment dated dated 14.03.2014 on the ground that the agreement Ex.A2 was executed in a Rs.20/- Non-Judicial Stamp paper and it is an agreement between the respondent /plaintiff and the appellant/defendant in the presence of the village elders and it is valid.



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6.The plaintiff and defendant are the brothers.

The suit properties are their ancestral properties.

The father of the plaintiff and the defendant bought a tractor bearing registration number TCT 5546 and TCT 5547 by pledging the 5<sup>th</sup> item of the suit property with the State bank of India Agricultural Development Branch, Tirunelveli and he did not repay the loan amount. Therefore the bank instituted a suit in O.S.No.233 of 1994 on the file of Subordinate Court, Tirunelveli to recover the property and the suit was decreed against Sudalaimuthu the father of the plaintiff and defendant.

7.The property pledged was brought into auction and as per the terms and condition of the compromise deed dated 05.03.2005 (Ex.A2) both the plaintiff and the defendant participated in the court auction. As per this document the respondent/plaintiff paid the share amount.

8.Taking advantage of the property standing in the name of appellant/ defendant in the court auction, the review applicant tried to alienate the property and hence the respondent / plaintiff filed the above suit in O.S.No.67 of 2005 before the learned principal Subordinate



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Judge, Tirunelveli and the same was dismissed on the ground that the compromise agreement entered between the plaintiff and the defendant was not a registered one.

9.The first appellate court in A.S.No.26 of 2006 dated 17.08.2006 allowed the appeal and decreed the suit in favour of the respondent/plaintiff by reversing the judgment and decree made in O.S.No.67 of 2005 date 24.02.2006 on the ground that though Ex.A2 compromise deed was not a registered one, the contents of the document were not disputed at all and it was agreed in chief examination (DW.1).

10.The scope of review application is very limited that there has to be sufficient reason provided before this court in order to entrain the review application, in view of the following decisions:

a.In ***Lily Thomas v.Union of India***, AIR 2000 SC 1650, the Hon'ble Supreme Court has held that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the



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exercise of power. The review cannot be treated like an appeal in disguise.

b. In the case of **Patel Narshi Thakershi vs. Pradyumansinghji Arjunsinghji, (1971) 3 SCC 844**, the Hon'ble Supreme Court has held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise.

c. What can be said to be an error apparent on the face of the proceedings has been dealt with and considered by the Hon'ble Supreme Court in the case of **T.C. Basappa vs. T.Nagappa, AIR 1954 SC 440** held that such an error is an error which is a patent error and not a mere wrong decision.

11. The document Ex.A2 has been considered by this court as a valid one because the agreement entered by the parties are legally valid and this Court has rightly decided the second appeal.



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12. This court, applying the ratio laid down by the Hon'ble Supreme Court in the above cited decisions, considered the grounds raised by the review applicant, which in the considered view of this Court, do not make out a case to interfere with the judgment and decree passed in the second appeal. Accordingly this review application is dismissed. No costs. Consequently, connected miscellaneous petitions also stand dismissed.

**25.03.2022**

Internet : yes/No

To

1.The Principal District Judge,  
Tirunelveli.

2.The Subordinate Judge,  
Tirunelveli.



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**B.PUGALENDHI., J**

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