



Rev.Appl.No.170 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	06.04.2023
PRONOUNCED ON	12.04.2023

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

Rev.Appl.No.170 of 2010

in

S.A.No.1913 of 2003

1.Vathumalai
2.Rupavathy
3.Muniammal
4.Saroja
5.Jaiganesh
6.Saravanan

...Review Petitioners/Appellants

Vs.

1.Jothi Gandhi
2.Sabapathy

...Respondents.

PRAYER: Review Application filed under Section 114 read with Order LXVII Rule 1 of CPC to review the judgment and Decree dated 31.08.2010 made in S.A.No.1913 of 2003.



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For Appellants : W.R.Subashiri
for Ms.R.Raja Lakshmi

For Respondents : W.M.Abdul Majeed

ORDER

This is a review petition filed to review the judgment and decree of this court in S.A.No.1913 of 2003 dated 31.08.2010.

2. The proceedings arose as follows:-

(I). One Govindaswami executed a settlement deed in favour of his brother Krishnaswamy on 11.07.1970. After a gap of the 13 years, he executed a sale deed in favor of his son in law on 23.02.1983. One year thereafter, he canceled the settlement deed by a document dated 23.02.1984. Hence the said Krishnasamy filed a suit for declaration and for injunction in O.S.No.606 of 1987 on the file of the District Munsif Court at Gudiyatham. The suit was dismissed on the ground that only a certified copy of the settlement deed was produced.

(II). It was taken on appeal in A.S.No.136 of 1994 before the Principal District Judge at Vellore. The appeal was dismissed. The finding that only a certified copy had been filed and the settlement deed was not proved, stood confirmed against which S.A.No.1913 was presented.



3. My predecessor had dismissed the appeal on the ground that since the settlement deed was denied, the plaintiff had not proved the same in accordance with law. Therefore, he took a view that the secondary evidence has to be proved first and only thereafter the burden shifts to the respondents to disprove the same.

4. It is pertinent to point out that the very same learned Judge had issued notice in the review when it was pointed out to him that the plea was not that the settlement deed was denied but that the settlement deed was not acted upon.

5. Heard Ms.Raja Lakshmi, Learned Counsel for the Appellants and Mr.Abdul Majeed, Learned Counsel for the Respondents. The scope of the review is very limited. I only have to see if there is an error apparent on the face of the record. The Learned Counsel for the Review petitioner took me through the grounds of the review and had submitted that the settlement deed was not specifically denied but the plea was that the document under Ex-A2-settlement deed was not acted upon. She would further submit that the respondent would plead that the settlement deed was canceled and therefore, one has to presume that the document had been executed in accordance with law. According to her, the cancellation of a settlement deed



would arise, only if it had been executed.

6. Mr.Abdul Majeed, Learned Counsel for the Appellants would raise an objection that this review is not maintainable, in view of the judgment of the Supreme Court in ***S.Madhusudhan Reddy Vs. V.Narayana Reddy and Ors. (Manu/SC/1013/2022)*** dated 18.08.2022. He invited my attention to paragraph No.20, in particular 20.2 Sub-Clause No.VI stating the mere possibility of two views on the subject cannot be a ground for review.

7. I went through the order of the Learned Single Judge. My predecessor had dismissed the appeal on the ground that as no proper explanation had been given for production of the secondary evidence and since they fail to prove the secondary evidence as per Evidence Act, no further interference is necessary in the appeal.

8. I asked a pointed question to Mr.Abdul Majeed, whether he was denying the execution of the settlement deed or whether he is ascertaining that the settlement deed had not come into force. He took me to paragraph No.8 of the written statement and stated that the settlement deed never came into force and the same had been not acted upon. He would state that he had taken both the pleas about the validity of the documents and about the same not having been acted upon. One plea is contradictory to the other and



therefore, I called upon him to state as to what was that he had taken before the learned single judge. He submitted that the categorical plea that was taken by him before the learned single Judge was that the settlement deed never came into force and it was not acted upon. That issue has not been answered by this court nor has it been considered by the learned single judge. This according to me is an error apparent on the face of the record. It falls under paragraph 20.1 (ii) of the aforesaid order.

9. It is one thing to say that the document was never executed and the other to say it was executed but never came into force. Hence, the error is apparent.

10. Consequently the Review Application is allowed. The second appeal is restored on to the file. Being the suit of the year 1987. The parties shall address arguments in the main appeal on 24th of April 2023.

12.04.2023

nst

Index : Yes/No

Neutral citations : Yes/No

Speaking order : Yes/No



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V. LAKSHMINARAYANAN, J,

nst

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