



Rev.Appl.No.184/2012

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE P.B.BALAJI

Rev.Appl.No.184/2012
& CMP.No.1/2012

Mr.G.S.Srinath

.. Petitioner

Vs.

Mrs.Saradammal @ Saradambal

.. Respondent

Prayer:- Review Application filed under Order 41 Rule 1 of CPC seeking review of the judgment and decree dated 04.07.2012 made in Appeal Suit NO.849/2010.

For Petitioner

: Mr.R.Abdul Mubeen



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ORDER

[Order of the Court was made by S.S.SUNDAR, J.,]

- (1) This Review Application is filed to review the judgment of this Court dated 04.07.2012 passed in AS.No.849/2010.
- (2) Unfortunately, this Review Application filed before this Court in the year 2012, is coming up for hearing after twelve years.
- (3) The plaintiff in the suit in OS.No.77/2007 on the file of the Principal District Court, Tiruvallur, who is also the respondent in AS.No.849/2010, is the petitioner in the above review application.
- (4) Brief facts that are necessary for the disposal of this review application are as follows:
- (5) The plaintiff / review petitioner filed the suit in OS.No.77/2007 for specific performance of an Agreement of Sale dated 05.10.2004. The petitioner entered into an Agreement of Sale with the respondent/defendant in respect of the suit property for a total consideration of Rs.54,25,200/-. It is the case of the petitioner that a sum of Rs.12 lakhs was paid as advance. The petitioner stated that he was also put in possession of the property. It is his further



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case that as per the suit Agreement, the defendant was required to measure the property before execution of Sale Agreement. It is stated by the petitioner that as the respondent did not come forward to measure the property, the petitioner sent a notice/letter dated 23.12.2004, to the defendant calling upon her to measure the suit property. It is admitted by the petitioner that earlier the petitioner filed a suit for permanent injunction and obtained an order of interim injunction restraining the defendant therein from alienating the property. The said suit was later dismissed as withdrawn. The present suit was filed for specific performance on 04.07.2007.

- (6) It appears that the respondent / defendant filed a petition under Order 7 Rule 11 of CPC to reject the plaint on the ground that the second suit for specific performance is barred under Order 2 Rule 2 of CPC. The said application filed by the defendant/respondent herein was dismissed and the Civil Revision Petition filed by the defendant in CRP.No.3868/2008 was also dismissed. The operative portion of the order of this Court in CRP.No.3868/2008 dated 18.12.2008 reads as follows:-



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"24.In the up-short of detailed discussions mentioned supra and on overall assessment of cumulative facts and circumstances of the case, this Court is of the considered view that the second suit viz., O.S.No.77 of 2007 filed by the respondent/plaintiff is not barred under Order 2 Rule 2 of Civil Procedure Code and even the institution of the second suit is not a bar under Order 23 Rule 3 or 4 of Civil Procedure Code and since the second suit is based on specific performance of agreement for a larger relief than the relief prayed for in the first suit viz., O.S.No.185 of 2006 filed for permanent injunction and taking note of the another fact that the plaintiff/P.W.1 is to be cross examined from 21.08.2007, this Court comes to the inevitable conclusion that I.A.No.1110 of 2007 filed by the revision petitioner/defendant praying to reject the plaint is not maintainable in law and resultantly, the civil revision petition fails and the same is hereby dismissed in the interest of justice.

25.In the result, the Civil Revision Petition is dismissed, leaving the parties to bear their own costs. The order passed by the trial Court in I.A.No.1110 of 2007 is affirmed for the reasons assigned by this



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Court in this revision. Since the suit O.S.No.77 of 2007 on the file of Principal District Judge, Tiruvallur is pending at part-heard stage wherein the plaintiff as P.W.1 is to be cross examined from 21.08.2007, this Court directs the learned Principal District Judge, Tiruvallur to dispose off the suit within a period of four months from the date of receipt of copy of this order and to report compliance, uninfluenced with any of the observations made by this Court in this revision. The parties are directed to complete the proceedings by lending their cooperation to the trial Court. It is open to the revision petitioner/defendant to raise all factual/legal contentions before the trial Court and the trial Court shall dispose off the suit O.S.No.77 of 2007 in the manner known to law, after providing due opportunities to parties. Consequently, connected miscellaneous petition is also dismissed."

- (7) The appeal suit in AS.No.849/2010 was allowed mainly on the ground that the plaintiff who is the respondent in the appeal suit, has not proved his readiness and willingness to perform his part of the suit agreement in terms of the recitals. A Division Bench of



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this Court found that the suit is liable to be dismissed as the same was barred under Order 2 Rule 2 of CPC.

- (8) The instant Review Application is filed by the petitioner/plaintiff on the ground that the petitioner herein, as plaintiff, has deposited the entire balance of sale consideration when the suit was filed and therefore, the judgment and decree of this Court dated 04.07.2012, allowing AS.No.849/2010 is liable to be reviewed especially when the Court has not noticed this vital fact while considering the issues on merits.
- (9) The second point that was urged by the learned counsel for the petitioner is that the Court failed to advert to the material fact that the issue regarding bar under Order 2 Rule 2 of CPC has already been considered earlier in the application filed by the respondent / defendant and the dismissal of the application filed by the respondent / defendant under Order 7 Rule 11 of CPC had also been upheld by this Court in CRP.No.3868/2008.
- (10) The scope of review has been examined by the Hon'ble Supreme Court and by this Court and it has been repeatedly held that the



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review does not lie unless there is an error apparent on the face of the record and the scope of review cannot be beyond the purview of Order 47 Rule 1 of CPC. It has been repeatedly held by this Court that review is not an appeal in disguise. It is also to be noted that the review cannot be maintained if this Court is required to go into the facts even to find out any error apparent on the face of the record. In other words, if this Court has to undergo a process of reasoning for finding out whether there is an error apparent, the review application cannot be entertained.

- (11) This Court, in similar circumstances, in the case of ***A.Jothiramalingam and Others Vs. The Executive Officer/Joint Commissioner, Department of Hindu Religious and Charitable Endowments and Ors.*** in Review Application (MD) Nos. 21 to 25 of 2016 and C.M.P.(MD) Nos. 7766 to 7774 of 2016 dated 22.07.2016, has held as follows:-

"20. It is a settled proposition of law that review is not an appeal in disguise and the Hon'ble Supreme Court has time and again reiterated that a review is by no means an appeal in disguise whereby an



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erroneous decision is reheard and corrected, but lies only for patent error. A judgment may be opened to review inter alia if there is a mistake or error apparent on the face of record. An error which is not self-evident and has to be deducted by a process of reasoning, can hardly said to be error apparent on the basis of record justifying the Court to exercise its power of review under Order 47, Rule 1 CPC. Exercise of the jurisdiction under Order 47 Rule 1 CPC is not permissible for an erroneous decision to be reheard and corrected."

- (12) In the present case, this Court while disposing of the appeal on merits, has considered the entire evidence on record and held that the plaintiff/petitioner herein has failed to prove his readiness and willingness.
- (13) Learned counsel for the petitioner admitted that the suit Agreement is dated 05.10.2004 and the petitioner herein/plaintiff agreed to complete the same within a period of three months. Though a sum of Rs.12 lakhs was paid as advance, the balance payable is nearly 78% of the total sale consideration. The only excuse the petitioner herein had given for non performance by



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paying the balance of sale consideration is that the respondent herein / defendant did not come forward to measure the suit property. The contention of the plaintiff was not accepted by the Division Bench. It is strange for the petitioner herein/plaintiff who came to Court on a plea that he took possession of the property under the Agreement to say that the defendant in the suit for specific performance, did not come forward to measure the property. If there is any shortage, it is for the plaintiff to put the defendant on notice that there is shortage of extent and therefore, the balance to be payable is reduced if the consideration agreed is based on extent. The question of readiness has been considered with reference to several facts and evidence. Merely because the plaintiff had deposited the money at the time of filing the suit, that does not absolve the plaintiff to discharge the burden of readiness and willingness as settled by the Hon'ble Supreme Court and this Court in several precedents.

- (14) The reason stated by the petitioner herein/plaintiff for seeking review of the judgment dated 04.07.2012 cannot be accepted.



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- (15) For the reasons above stated, this Court does not find any merit in the review application and the review application is liable to be dismissed.
- (16) Accordingly, the Review Application stands **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

[SSSRJ] [PBBJ]

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