



Rev. Appl. No.221 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

Rev.Appl.No.221 of 2022

against

S.A.No.93 of 2017

1.G.Krishnamoorthy
2.Anushiya
3.Hemalatha
4.Kishore Kumar

... Review Petitioners

Vs.

1.S.Dhanasekar
2.S.Chandrasekar

... Respondents

Prayer : Review Application filed under Order 47 Rule 1 read with Section 114 of Code of Civil Procedure to review the findings recorded in Paragraph-10 of the judgment and decree dated 09.04.2021, made in S.A.No.93 of 2017, passed by this Court.

For Petitioners : Mr.E.Prabu

ORDER

The above Review Application is filed seeking to review the judgment and decree, dated 09.04.2021, in S.A.No.93 of 2017.



Rev. Appl. No.221 of 2022

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2.The review petitioners are the respondents in S.A.No.93 of 2017 and plaintiffs 2 to 5 in the suit in O.S.No.3986 of 2011. The review petitioners filed the suit in O.S.No.3986 of 2011 to declare the passage described in Schedule-B in the sale deed dated 30.07.1975 as their exclusive passage and for mandatory injunction directing defendants 1 to 3 to remove the building erected by encroaching the portion of the said passage. The trial Court dismissed the suit. However, the lower Appellate Court set aside the judgment and decree of the trial Court and granted declaratory relief in favour of the review petitioners over the common passage. Aggrieved by the judgment and decree of the lower Appellate Court, the defendants in the suit preferred the Second Appeal in S.A.No.93 of 2017. The said Second Appeal was dismissed by judgment and decree dated 09.04.2021. However, while dismissing the Second Appeal, this Court has made certain observations in favour of the defendants for using the common passage, even though the defendants' claim of title was negated.

3.Stating that the defendants have not pleaded that they are entitled to easement by prescription, learned counsel appearing for the review petitioners stated that the observations and findings of this Court recognizing



Rev. Appl. No.221 of 2022

the defendants' right of easement is unwarranted and that therefore, the judgment of this Court in the Second Appeal should be reviewed. Learned counsel then submitted that, by virtue of the findings of this Court in the Second Appeal holding that the defendants have a right of easement, the defendants have filed a suit to establish their right of easement and that such a finding which is not supported by pleadings cannot be allowed as the plaintiffs will be put to irreparable hardship if they are forced to face another litigation at the instance of the defendants merely on the basis of the findings as to the easementary right of defendants.

4.First of all, there are two aspects that are involved, as submitted by the learned counsel appearing for the review petitioners. The first issue is regarding maintainability of the Review Application on the ground raised. This Court and Hon'ble Supreme Court repeatedly held that review is not an alternative for appeal. Order 47 Rule 1 of CPC specifically refers to the grounds on which such review application can be filed. A review is maintainable only if there is an error apparent on the face of the record. Even if the Court is required to analyse and examine the merits of the findings, a review cannot be entertained. In short, if the Court requires a process of reasoning to find out whether there is an error on the face of the record, a



review application will not fall within Order 47 Rule 1 of CPC.

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5.Secondly, learned counsel appearing for the review petitioners submitted that the finding in favour of the defendants in the suit filed by the appellants is that defendants are entitled to right of easement even though their claim of title is disbelieved. The learned counsel contended that the defendants have now filed a suit for declaration of their easement right only by virtue of the findings, though it is not even pleaded in the written statement filed by the defendants in the previous suit that they are entitled to a right of easement.

6.It is seen that a plea of easement involves admission of title of the other side against whom the plea is raised. When a person claims exclusive title, it is true that he cannot be granted relief on the basis of a right of easement. In the present case, this Court has not granted any relief in favour of the defendants on the basis of the findings recorded in the Second Appeal. In such circumstances, when no part of the decree is in favour of the defendants, the review need not be entertained. This Court might have observed the entitlement of defendants to exercise a right of easement. So long as a decree is not granted in favour of the defendants in recognition of



Rev. Appl. No.221 of 2022

their right of easement, it is open to the review petitioners to canvass every ground that may be possible or available to them to defend the suit, if the defendants seek the relief on the basis of the findings of this Court.

7.This Court, therefore, does not find any reason or ground to review the judgment and decree passed by this Court, dated 09.04.2021, in the Second Appeal in S.A.No.93 of 2017. Hence, this Review Application is dismissed. No costs.

09.03.2023

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Internet : Yes

Index : Yes / No

S.S. SUNDAR, J.



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Rev. Appl. No.221 of 2022

mkn

Rev.Appl.No.221 of 2022

09.03.2023