



WEB COPY

Rev.Appl.No.236 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.03.2023

PRONOUNCED ON: 25.05.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

Rev.Appl.No.236 of 2022

R.Krishnan (died)

1.Dharmapuri Bar Association

Rep. by its Secretary

P.Dharman,

District Court Complex,

Dharmapuri – 636 701.

2.D.Rajangam

3.S.Ezhil Sundaram

...Petitioners

Vs.

M.Govindasamy (deceased)

M.G.Kannan

...Respondent

PRAYER: Petition is filed under Order 47 Rule 1 r/w 114 of CPC to review the order dated 20.11.2018 made in C.R.P.(NPD).No.3336 of 2001 on the file of this Hon'ble Court by allowing this review application.



For Petitioners : Mr. N.Manoharan

For Respondent : Mr. S.Subbiah
Senior Counsel
for M/s.Elizabeth Ravi.

ORDER

The respondents 2 to 4 in C.R.P.(NPD).No.3336 of 2001 are the petitioners in this review petition and they seek to review the order dated 20.11.2018 passed by this Court on the ground that several facts had not been brought to the notice of this Court and subsequent events have rendered the respondents / revision petitioners dis-entitled to the order subject matter of review.

2. The property in question admittedly belongs to the Twentyfive Club which is a club formed by the Advocates of Dharmapuri Bar. The disputed property measures an extent of 39 cents out of 3.17 acres in R.S.No.49 A of Virupakshipuram Village, Dharmapuri. The boundaries on all the four sides are as follows:



(i) *North by the property belonging to M.G.Natesa Chettiar.*

(ii) *South by the property belonging to K.Narasimhachari.*

(iii) *West by lands belonging to Selliyamman & Mariyamman Temple; and*

(iv) *East by channel flowing into Balappakuttai and road leading to Dharmapuri Town.*

3. In order to appreciate the grievances of the review petitioners, it is necessary to briefly set out the events which have ultimately led to the filing of this review petition.

* **26.08.1925** - The larger area including the suit property purchased by the Twenty five Club by its Secretary Raja Rao son of Venkoba Rao.



* O.S.No.1099 of 1978 filed against A.Maragadhammal, M.Govindhasamy and Panchalaiaammal by Sundhararajan, S.Seetharaman, C.K. Srinivasa Rao, P.N. Nagarajan and R.Krishnan, who are Advocates practicing at Dharmapuri and belonging to the Twentyfive Club, seeking mandatory injunction directing the respondents to remove constructions and handover vacant possession of the suit property.

* **01.03.1980** - Transfer Petition is filed by the 3rd defendant in the suit, Panchalaiaammal in Transfer O.P.No.6 of 1980 before the Principal District Court, Dharmapuri seeking to transfer O.S.No.1099 of 1978 from the file of the District Munsif, Dharmapuri to the file of the District Munsif, Krishnagiri on the ground that since the suit is filed by the Advocates, they are not being properly represented before the District Munsif, Dharmapuri.

* **30.01.1981** - The 4th and 5th respondents / plaintiffs 4 and 5 were set ex parte.



WEB COPY

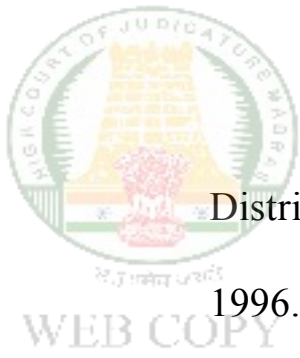
* **18.01.1982** - Since counter was not filed by the respondents 1 to 3 (plaintiffs 1 to 3), they were set ex parte and the Transfer Petition was allowed.

* **03.08.1982** - Though transfer was ordered, the suit in O.S.No.1099 of 1978 was proceeded with and decreed by the District Munsif, Dharmapuri.

* **1993** - R.E.P.No.102 of 1993 filed by the plaintiffs / petitioners for executing the decree in O.S.No.1099 of 1978.

* **01.03.1994** - E.A.No.34 of 1994 was filed by the 2nd and 3rd defendants in R.E.P.No.102 of 1993 under Section 47 of the CPC. The petition was filed on the ground that the decree passed by the District Munsif, Dharmapuri in O.S.No.1099 of 1978 is a nullity and fraud has been played on the Court.

* **13.11.1995** - R.E.P.No.102 of 1993 is transferred from the file of the District Munsif, Dharmapuri to the file of the



District Munsif, Krishnagiri and re-numbered as R.E.P.No.56 of 1996.

* **11.07.1997** - The respondents 1 to 4 (plaintiffs 1 to 4) reported dead. Claim dismissed against them.

* **08.08.1997** - Counter of the 5th respondent/5th plaintiff not filed. He was called absent and set ex parte and therefore the petition was allowed.

* **19.08.1997** - Within 11 days, the 5th respondent filed an application for setting aside the order dated 08.08.1997 in R.E.A.No.34 of 1997. The application for setting aside is numbered as R.E.A.No.278 of 1997.

* **03.10.1997** - R.E.A.No.278 of 1997 was dismissed for default since notice was not served on the respondent. Thereafter, R.E.A.No.68 of 1997 was filed for restoring R.E.A.No.278 of 1997.



WEB COPY

Rev.Appl.No.236 of 2022



* **05.07.2001** - Conditional order was passed, in and by which R.E.A.No.68 of 1997 was allowed with cost of Rs.300/- to be paid to the respondent on or before 16.07.2001, failing which the petition was to stand dismissed. The matter was adjourned to 17.07.2001.

* **17.07.2001** - Rs.300/- deposited into the Court and the petition in R.E.A.No.68 of 1997 was allowed.

* C.R.P.(NPD).No.3336 of 2001 has been filed challenging the order in R.E.A.No.68 of 1997.

4. Events subsequent to the filing of the revision petition associated with the land:

* **27.11.1997** - Will was executed by the 2nd defendant/1st respondent in O.S.No.1099 of 1978 in favour of his son M.G.Kannan, the 2nd respondent in respect of his property. The 2nd item of this Will is the suit property.



* **04.02.1999** - Letter issued by the Commissioner, Dharmapuri Municipality, to the 1st respondent disallowing building approval on the following grounds:

- a) No set back of three feet provided.*
- b) Ownership details and documents not provided.*

* **19.02.1999** - O.S.No.282 of 1999 has been filed by the Advocates against the respondents herein for injunction restraining them from putting up any construction in the suit property.

* **06.10.2001** - Letter is received from the Vallalar Illam by the Advocates (plaintiffs in O.S.No.282 of 1999) requesting them to sell 4500 Sq.ft. in S.No.47/A1, without prejudice to the respondent's claim in the pending cases before the District Munsif, Krishnagiri and Mettur.



* **28.08.2009** - O.S.No.282 of 1999 dismissed as not pressed.

* **02.01.2015** - Order of the Commissioner, HR & CE in R.P.No.107 of 2004, which is a petition filed by the 2nd respondent against the Joint Commissioner, HR & CE and the Executive Officer of Arulmighu Selliamman and Mariamman Temple, directing the petitioner therein viz., the 2nd respondent herein to file an affidavit of undertaking within 7 days, as he had expressed his inability to pay fair rent and his willingness to handover the property to the Temple. It is in this property that the School was being run for which the suit property was being used as an extension.

* **21.05.2017** - Recognition given to the Vallalar Arivalayam Society to run the School is revoked by the District Primary Education Officer, Dharmapuri and the students have all been relocated to other Schools.



Rev.Appl.No.236 of 2022

* **25.09.2018** - C.R.P.(NPD).No.3336 of 2001 is
allowed.

* **18.12.2019** - Letter given by the respondents to the Superintendent of Police, Dharmapuri to provide Police protection to enable them to put up construction.

* **22.02.2020** - Letter received from the Executive Officer of Arulmighu Selliyamman & Mariyamman Temple in response to the letter dated 10.02.2020. In the said letter the Executive Officer has informed that the place where the school was being run has been taken over with effect from 01.04.2018. The vacant site around the building is being used as a parking area and the building is leased out to the Dharmapuri Town Builders Cooperative Society on a monthly rental.

* The 2nd respondent herein filed W.P.No.830 of 2020 seeking police protection for his peaceful possession and enjoyment of the land and building in the suit property.



WEB COPY

Rev.Appl.No.236 of 2022



* **24.07.2020** - The Deputy Superintendent of Police,

Dharmapuri was asked to conduct an enquiry on the complaint filed by the 2nd respondent herein. Pursuant to this, a notice had been issued by the Deputy Superintendent of Police, Dharmapuri and the petitioners herein have submitted a detailed response.

5. It is in the backdrop of the above chronology that it would be necessary to have a look at the order subject matter of review.

6. Mr.N.Manokaran, learned counsel appearing for the petitioners would primarily base his argument on the fact that even the counsel who had appeared for the defendant (respondent herein) had not brought to the notice of the Court the transfer of the suit O.S.No.1099 of 1978 from the file of the District Munsif, Dharmapuri to the file of the District Munsif, Krishnagiri. The learned counsel would submit that the counsel appearing for the 3rd defendant was the very same person who had moved transfer petition and he was very much present on the date when the suit



was decreed ex parte. The learned counsel would further submit that the 2nd and 3rd defendants had filed a petition in I.A.No.253 of 1983 to set aside ex parte decree, which was dismissed with cost on 20.12.1991.

7. The learned counsel would further submit that without having any semblance of a right to the suit property, the defendants had attempted to put up illegal construction on the suit property which belonged to the Advocates of Dharmapuri. The approval was not granted since the respondent herein were unable to produce the ownership documents in respect of the land in question. The learned counsel would further argue that in the suit property, the defendants had been permitted only to use a portion of the property as a play ground. The suit was filed by the erstwhile practitioners of the Dharmapuri Bar for a mandatory injunction to remove the construction and handover vacant possession together with damages. The defendants admit the title of the review petitioners. However, they are now attempting to put up construction on the suit property which admittedly does not belong to them and that too



by filing an application seeking approval of the authorities to put up construction in a property not belonging to them. The defendants have nowhere sought for declaration that the property belongs to them.

8. The learned counsel would submit that C.R.P.(NPD).No.3336 of 2001 had come up for final hearing 17 years after its filing and the litigation has been pending for over 43 years. There appears to be some communication gap and the review petitioners were unable to give proper instructions to their counsel. As a result of which, several facts could not be brought to the notice of this Court. It is his argument that had these facts brought to the notice of this Court, this Court would not have allowed the revision petition.

9. The learned counsel would further submit that an application for review not only lies when there appears an error apparent on the face of the record but also on two other grounds:

(a) When the discovery of new and important



matter or evidence which despite due diligence was not within their authority could not be produced by them when decree was made.

(b) For any other sufficient reasons.

10. The learned counsel would rely upon the Judgement of the Hon'ble Supreme Court reported in **2009 (14) SCC 663 – *Inderchand Jain (dead) through Lrs. Vs. Motilal (dead) through Lrs.,*** in respect of his argument that application for review is maintainable under the *doctrine of actus curiae neminem gravabit*, meaning “*An act of the Court shall prejudice no man.*”

11. The learned counsel would also argue that the respondent herein who is aware of several facts had not brought these facts to the knowledge of this Court, which in effect is fraud being played on the Court and once it is proved that there has been fraud played on the Court, then the Court has to necessarily review its earlier order. He would rely upon the following Judgements in support of



his arguments:

WEB COPY

(i) **1994 (1) SCC 1** – S.P.Chengalvaraya Naidu
(Dead) by Lrs. Vs. Jagannath (Dead) by Lrs. and
others.

(ii) **2007 (4) SCC 221** – A.V.Papayya Sastry
and others Vs. Government of Andra Pradesh and
others.

(iii) **2019 (14) SCC 449** – Satluj Jal Vidyut
Nigam Vs. Raj Kumar Rajinder Singh (Dead)
Through Legal Representatives and others.

The learned counsel would therefore submit that the order
passed in revision has to necessarily be reviewed.

12. Per contra, Mr. S.Subbiah, learned Senior Counsel
appearing for Ms.Elizabeth Ravi, learned counsel for the
respondent would submit that the review petitioners have added a
new story, which has not been stated earlier. The learned senior
counsel would submit that the petitioners are all practicing lawyers,



WEB COPY



who are very much aware about the procedures. The learned senior counsel would submit that the decree which is now sought to be executed is a nullity in as much as decree has been passed by a Court not having jurisdiction, since the suit had been transferred long prior to the passing of the decree to the District Munsif, Krishnagiri and despite the transfer, the District Munsif, Dharmapuri has proceeded to decree the suit. The execution proceedings have been initiated on the basis of this decree, which is a nullity. The learned senior counsel would argue that once the decree is a nullity, no action can be taken on the basis of the decree that is null and void.

13. The learned senior counsel would further submit that the review petition does not give any details as to why the petitioners seek to review the earlier order and that apart the review petitioners were represented by a counsel in the revision. The learned senior counsel would submit that there has been deliberate act of fraud perpetrated by the review petitioners before this Court and they have obtained a decree suppressing the order passed in the



transfer petition. The learned senior counsel would further submit that the delay in approaching this Court by way of review has also not been properly explained. The learned senior counsel therefore would submit that there is no merits in the review petition and the same should be dismissed.

14. Heard the learned counsel for the petitioners and learned senior counsel for the respondent and perused the records.

15. The entire facts as set out in chronology supra has not been brought to the notice of this Court by the counsel who had then appeared for the revision petitioner. The revision petition itself has been filed only against a conditional order in an Interlocutory Application which seeks to set aside the ex parte order passed in R.E.A.No.278 of 1997, in and by which the Section 47 application filed by the respondents herein has been allowed ex parte. The application to set aside the ex parte order has been filed within 11 days of the order and the same had been dismissed for default on the very second hearing since the petitioner therein,



namely, the 5th plaintiff had not taken notice on the respondent.

The application to set aside this order is the one that has been allowed on cost. It was not brought to the notice of this Court that on the date of the passing of the order in revision, the respondent had surrendered possession of the property in which school was run, to the Temple and that the recognition granted had also been withdrawn. The suit property was being used only as an extension for the School as a play ground. Once the School ceases to exist, then the necessity for the appurtenant land also ceases to exist. Further, after the orders have been passed in C.R.P.(NPD).No.3336 of 2001, the respondent has made a complaint to the Sub Inspector of Police, Dharmapuri making the following statement:

“பார்வை 1, 2 மற்றும் 3ல் குறிப்பிட்டுள்ள ஆவணங்களின் அடிப்படையில் தருமபுரி டவுன், விருப்பாட்சிபுரம் கிராமம், நாட்டாண்மைபுரத்தில் (சர்வே எண்.49/ஏ)ல் 1967 முதல் நடைபெற்று வந்த வள்ளலார் அறிவாலய தொடக்கப்பள்ளிக்கு கட்டிடம் கட்டும் பணியை ஓரிரு நாளில் துவங்கப்பட உள்ளதால் மேற்படி நிலத்தில்



தருமபுரி வழக்கறிஞர்கள் சங்க உறுப்பினர்கள்
சிலரால் சட்டத்திற்கு புறம்பாக மதராஸ் தார்க்
கட்டிடத்தை ஆக்கிரமித்து அதனுள்
வைத்துள்ள பொருட்களை அப்புறப்படுத்தியும்
மேற்படி எல்லையில் பள்ளிக் கட்டிடம் கட்டும்
பணிக்கு வழக்கறிஞர்கள் சங்க உறுப்பினர்கள்
சிலரால் எவ்வித இடையூறும் ஏற்படா வண்ணம்
போலீஸ் பாதுகாப்பு வழங்கிட வேண்டுமாய்
தங்களை இரு கரம் கூப்பி பணிவுடன்
கேட்டுக்கொள்கிறேன்.

16. As to how the respondent gets right to put up construction in the other property has not been explained. However, in the writ petition that has been filed seeking police protection, namely, W.P.No.830 of 2020, the respondent, in the affidavit has made the following statement:

“23. In view of the acts of mischief done by the members of the third respondent, the school was temporarily shifted from the said property to another



place, and after when all the litigations came to an end, first on 28.08.2009, when their suit in O.S.No.282 of 1999, on the file of the District Munsif of Mettur, came to be dismissed as not pressed and when the above Civil Revision Petition in C.R.P.(NPD)No.3336 of 2001 came to be allowed in my favour by a judgment dated 20.11.2018, I as the Secretary of Vallalar Illam opted to revive the said school back to the suit property and made all arrangements for the same.

24. Even then, the respondents 3 to 5 and the members of the third respondent are not allowing me to enjoy the property where, I am running the Educational Institution in the name of Vallalar Arivalayam, as its Secretary "Vallalar Illam", and some of the members used to get into the building in an intoxicated condition and also use the building thereon, on some occasions, as a place of



WEB COPY

Rev.Appl.No.236 of 2022



consumption of liquor, overlooking the fact the said property is an educational institution to be treated equal to a worshipping place”

17. The contents of the affidavit and the complaint that had been given to the Police on 18.12.2019 contains two different sets of facts. In the Writ Petition the prayer is to provide police protection for peaceful enjoyment and possession of the property, whereas, in the complaint dated 18.12.2019 it is seeking permission for putting up construction.

18. Be that as it may, all these facts were not brought to the notice of this Court even by the review petitioners. In fact, there was absolutely silence with reference to these events by the respondent herein as well as the petitioners. Another fact which has been brought to the notice of this Court is the offer of the respondent to purchase the property vide their letter dated 06.10.2001. It is no doubt true that the review petitioners had not brought this to the notice of the Court during the hearing of the



revision petition. However, these facts which are now put forward by the review petitioners cannot be ignored. As to whether the grounds that are now been raised by the review petitioner can be considered by way review petition is answered by the Hon'ble Supreme Court in its Judgement reported in **2009 (14) SCC 663 – *Inderchand Jain (dead) Through Lrs. Vs. Motilal (Dead) Through Lrs.*** That was a case, where the Hon'ble Supreme Court was called upon to consider the jurisdiction by the Court and/or the extent thereof to review its own decision. The Hon'ble Supreme Court in the said Judgement has stated as follows:

“8. An application for review would lie inter alia when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. In [Rajendra Kumar v. Rambai](#), this Court held :

“6.The limitations on exercise of the power of review are well settled. The first and foremost



requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed."

9.The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake. Furthermore, an application for review shall also lie for any other sufficient reason."

19. Therefore, in the instant case, the events after the filing



Rev.Appl.No.236 of 2022

of the revision petition had not been brought to the notice of this Court, as a result of which, this Court has proceeded to allow the revision petition, which in the light of the details now supplied needs to be reviewed and further there has been deliberate suppression on the part of the revision petitioners / respondent with reference to the subsequent events, all of which was very much within their knowledge. Therefore, there is sufficient reasons for reviewing the earlier order.

20. In the light of the above discussion, the Review Application is allowed and the order dated 20.11.2018 in C.R.P.No. 3336 of 2001 is recalled and the revision is directed to be listed for final hearing. No costs.

25.05.2023

Index : Yes/No
Internet : Yes/No
Speaking Order / Non Speaking Order
kan



WEB COPY



Rev.Appl.No.236 of 2022

P.T. ASHA, J,

kan

Pre-Delivery Judgment in
Rev.Appl.No.236 of 2022

25.05.2023