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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 03.08.2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

REVIEW APPLICATION No.85 of 2023

R.Jaya

...

Applicant

-VS-

1.K.Rajendran

2.The District Collector,
Cuddalore District,
Cuddalore.

3.The Sub Collector,
Office of the Sub Collector,
Cuddalore District.

4.Virudhachalam Municipality,
rep.by its Commissioner,
Virudhachalam,
Cuddalore District.

5.The Tahsildar,
Virudhachalam,
Cuddalore District.

...

Respondents



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Prayer: Review Application filed to review the order of this Court made in W.A.No.14474 of 2021, dated 16.07.2021.

For Applicant : Mr.S.Saravana Kumar

For Respondents 2 & 3 : Mr.A.Selvendran,
Spl.Govt.Pleader

For Respondent 4 : Mr.P.Srinivas

ORDER

(By *S.Vaidyanathan,J.*)

Review Applicant / fifth respondent in the Writ Petition has come forward with this Application, seeking to review the order of this Court made in W.P.No.14474 of 2021, dated 16.07.2021.

2. Writ Petitioner / first respondent herein filed W.P.No.14474 of 2021 for a Writ of Mandamus to direct the respondents 1 to 4 therein to forthwith remove the illegal encroachment made by the fifth respondent therein in the Pattai Road in T.S.No.8, Old Survey No.5, at Ward E, Block 50, Virudhachalam Town, Cuddalore District, by considering and passing necessary orders on the representation of the petitioner, dated 11.06.2020.



3. The said Writ Petition was disposed of by a Division Bench, directing third and fourth respondents to make a joint inspection of the property in question after issuing notice to the parties concerned and find out whether the fifth respondent had encroached the pathway and, if so, to remove the encroachment after following due process of law.

4. The case of the first respondent herein in the Writ Petition was that he was in possession of the property in Old Survey No.6/8B (part) at Ward E, Block 50, Virudhachalam Town, Cuddalore District, after getting patta and, abutting his property, there was a pathway in Old Survey No.5, New T.S.No.8 and, only through the said pathway, he was having access to the property and, that being so, the private respondent had put up a house and prevented him from having ingress and egress to his property. Hence, the above said direction was issued by the Division Bench, while disposing of the Writ Petition.

5. The ground raised by the review applicant for reviewing the order is that the order in the writ petition was obtained by the writ petitioner behind her back and, by citing the said order, the writ petitioner, who is the first respondent herein, is coming in her way of occupying the house.



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6. It is now fairly well settled by a catena of decisions of this Court as also the Supreme Court that the scope of review is very minimal and it is circumscribed by the provisions of the statute. It would be relevant to refer to a few Judgments of this Court and also the Supreme Court to understand and appreciate the scope of review jurisdiction to find out if the applicant has made out a case for reviewing the order, dated 16.07.2021, passed in W.P.No.14474 of 2021.

7. A Division Bench of this Court, in the case of *The Special Officer, Kallal Co-operative Primary Agricultural and Rural Development Bank Ltd., Karaikudi, Sivagangai District Vs. R.M.Rajarathinam and Others [Review Application (MD). No.82 of 2013]* decided on 04.02.2015, held as follows:

“10... It is well settled that the scope of review is very limited. The review applicant cannot re-argue and he is not entitled for re-hearing on merits.”

8. In another decision of a Division Bench of this Court, in the case of *Dhanalakshmi Vs. M.Shajahan and others*, reported in *AIR 2004 Madras 512*, it was opined that the power of review is not an appeal in disguise. The relevant paragraphs of the said order are extracted below:

"11. From the above judgments, it is seen that the law is well settled inasmuch as the power of review is available only when there is an error apparent on the face of the record and not on erroneous



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decision. If the parties aggrieved by the judgment on the ground that it is erroneous, remedy is only questioning the said order in appeal. The power of review under Order 47 Rule 1 C.P.C. may be opened inter alia only if there is a mistake or an error apparent on the face of the record. The said power cannot be exercised as is not permissible for an erroneous decision to be "reheard and corrected". A review application also cannot be allowed to be "an appeal in disguise". Similarly, the error apparent on the face of the record must be such an error, which must strikes one on mere looking at record and would not require any long drawn process of reasoning on points, where there may conceivably be two opinions."

9. Furthermore, in *R.Mohala Vs. M.Siva and others* in *Review Petition No.61 of 2018 and WMP.No.10818 and 10819 of 2018*, decided on 25.04.2018, one of us (S.Vaidyanathan,J.) elaborately discussed the scope of review and, in Paragraph Nos.7 and 8, held as follows:

“7.The basic principle to entertain the review under Order 47 Rule 1 C.P.C. is to correct the errors but not to substitute a view. The judgment under review cannot be reversed (or) altered taking away the rights declared and conferred by the Court under the said judgment; once a judgment is rendered, the Court becomes functus officio and it cannot set aside its judgment or the decree; no inherent powers of review were conferred on the Court; the review Court cannot look into the trial Court judgment; it can look into its own judgment for limited purpose to correct any error or mistake in the judgment pointed out by the review petitioner without altering or substituting its view in the judgment under review; the review court cannot entertain the arguments touching the merits and demerits of the case and cannot take a different view disturbing the finality of the judgment; the review cannot be treated as appeal in disguise, as the object behind review is ultimately to see that there should not be miscarriage of justice and shall do justice for the sake of justice only and review on the ground that the judgment is erroneous cannot be sustained.



8. It is settled law that even an erroneous decision cannot be a ground for the Court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order under review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed.”

10. The Supreme Court, in the case of *Meera Bhanja Vs. Nirmala Kumari Choudhury*, reported in (1995) 1 SCC 170, while considering the scope of the power of review of the High Court under Order 47, Rule 1, C.P.C., held as follows:

"The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 C.P.C. The review petition of error apparent on the face of the record and not on any other ground. An error apparent on the face of the record must be such an error which must strike one on mere looking at the record and would not require any longdrawn process of reasoning on points where there may conceivably be two opinions. The limitation of powers on court under Order 47, Rule 1, C.P.C. is similar to jurisdiction available to the High Court while seeking review of the orders under Article 226."

11. In *Parsion Devi Vs. Sumitri Devi*, reported in 1997 (8) SCC 715, the Apex Court held as follows:

"Under Order 47, Rule 1, CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47, Rule 1, CPC. In exercise of the jurisdiction under Order 47, Rule 1, CPC, it is not permissible for an erroneous decision to be



"reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise."

12. From a reading of the above referred decisions, it can be fairly

discerned that :

1. Review is not an appeal in disguise.

2. The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 C.P.C.

3. A wrong exposition of the law or a wrong application of the law and failure to apply the correct law cannot be a ground for review.

4. The power to review is a restricted power given through a Court to go through the Judgment only to correct it or improve it, on the basis of some material which ought to have been considered, escaped consideration or failed to be placed before it for any other reason, but not to substitute a fresh or a second Judgment.

5. The power of review cannot be invoked to correct the erroneous Judgment and the finality attached to a Judgment cannot be disturbed.

6. Only errors which are apparent on the face of the record in the sense that errors which strike on mere looking at record can only be corrected and not those that require long drawn process of reasoning on point.

The above are some of the basic principles, on which the power to review rests.



13. To review a Judgment / Order, the Applicant needs to satisfy three basic requirements of Order 47 Rule 1 of C.P.C., which are as under:

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(i) From discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge (or) could not be produced by him at the time when the decree was passed (or) order made;

(ii) There is some mistake (or) error apparent on the face of the record in the judgment/order under review; and

(iii) or any other sufficient reasons.”

14. The ground raised by the applicant, in our considered opinion, is beyond the scope of the provisions of Order 47 Rule 1 CPC so also the law laid down by the Supreme Court and this High Court. The applicant, under the guise of Review Application, wants this Bench to re-write its Judgment, which is not possible under review jurisdiction. As already stated above, Review is not an appeal in disguise and there is no error apparent on the face of the record. Therefore, we do not find any ground to review the order passed by this Court.

15. It is represented by applicant that the writ petitioner has also encroached a major portion of the whole area. This aspect cannot be gone into in the Review Application. If the applicant has got any grievance, it is open for her to agitate the same in accordance with law.



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16. Review Application stands dismissed accordingly. No costs.

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[S.V.N.,J.] [T.V.T.S.,J.]

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