



Rev.Appl. Nos.174 & 175 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.09.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Rev.appl.Nos.174 & 175 of 2023
and
C.M.P.Nos.22500 & 22501 of 2023

Rev.Appl.No.174 of 2023

1.Jahir Hussain
2.Sahilatha Supriya Banu

.. Review applicants

Vs.

1.Sabura Bivi
2.M.E.Hassanar

.. Respondents

PRAYER in Rev.Appl.No.174 of 2023: Review Application is filed under Order XLVII Rule 1 read with Section 114 of the Code of Civil Procedure, against judgement and decree passed by this Court on 05.03.2021 in S.A.No.1198 of 2008 confirming the judgement and decree passed by the learned Principal Sub-Judge, Chengalpattu dated 31.03.2008 made in A.S.No.107 of 2006 as confirmed the judgment and decree of the District Munsif Court, Tambaram, dated 12.12.2005 made in O.S.No.211 of 2003.



Rev.Appl. Nos.174 & 175 of 2023

Rev.Appl.No.175 of 2023

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Sahilatha Supriya Banu

.. Review applicants

Vs.

1.Sabura Bivi

2.M.E.Hassanar

.. Respondents

PRAYER in Rev.Appl.No.154 of 2023: Review Application is filed under Order XLVII Rule 1 read with Section 114 of the Code of Civil Procedure, against judgement and decree passed by this Court on 05.03.2021 in S.A.No.1199 of 2008 confirming the judgement and decree passed by the learned Principal Sub-Judge, Chengalpattu dated 31.03.2008 made in A.S.No.107 of 2006 as confirmed the judgment and decree of the District Munsif Court, Tambaram, dated 12.12.2005 made in O.S.No.211 of 2003.

For Review Applicant : Mr.Satheeshkumar

COMMON JUDGMENT

These Review Applications have been filed to review the common judgment dated 05.03.2021 made in S.A.Nos.1198 & 1199 of 2008, passed by this Court.



2. Heard, Mr.Satheeshkumar, learned counsel for the Review Applicants and perused the materials available in the record. Private notice sent to the respondents returned with an endorsement 'refused'.

3. The review applicants herein are the appellants in both the second appeals, which were filed to set aside the common judgment and decree dated 31.03.2008 passed in A.S.No.107 & 35 of 2006 on the file of the learned Principal Subordinate Court, Chengalpattu, confirming the common judgment and decree dated 12.12.2005 passed in O.S.Nos.211 of 2003 and 20 of 2004 on the file of the District Munsif Court, Tambaram.

4. The learned counsel for the Review Applicants submitted that the review Applications are filed on the ground that there is an error apparent on the face of the record in the judgment and decree dated 05.03.2021 passed in the Second Appeal Nos.1198 & 1199 of 2008. He further submitted that the substantial question of law framed in the Second appeals is as follows:

"Whether the Courts below are correct in declaring certain title deeds invalid in a plaint suit for injunction. The



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Courts exceeded its limit and declared both Exs.B1 & B2 invalid when admittedly there were no prayer in the suit nor sufficient Court fees paid for those relief?"

5. The above said question of law has not been decided in accordance with law more particularly the registered document i.e. the Power of Attorney dated 26.03.1993 registered as Doc.No.577/1993 at Sub-Register Officer at Tambaram which is an unimpeachable document and also undisputed document, but without appreciating the value of the said document the said second appeals were dismissed on 05.03.2021, especially when the original Power of Attorney has not been cancelled. Till date the said power of attorney is in force and to substantiate his arguments he relied on District Registrar enquiry report, South Chennai vide proceedings dated 29.05.2023. Admittedly, the said report is sub-servant to the dismissal of the Second appeals but on perusal of the said report it clearly reveals that the District Registrar made a finding that there was no material to conclude that the said Power of Attorney was a fake document and there is no material to that effect. Therefore as on date as per the report of the Registering authority, the Power of Attorney is still in force.



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6. The learned counsel for the Review Applicants further submitted that the said complaint was given by the respondent herein before the District Registrar, Chennai based on which notice was given to the appellant as well as the respondent, and both of them submitted their objections. On considering the same, the said order was passed by the District Registrar so as per the recent development based on the order passed on 25.09.2023 by the District Registrar, Chennai, it clearly reveals that the Power of Attorney was executed by the respondent herein that is mother-in-law of the appellant based on that, sale deed was executed in favour of the appellant and it is still in force. Furthermore, as per the description of the property for entire 1st and 2nd floor the appellant filed the suit before the trial Court in O.S.No.20 of 2004. But the respondent mother-in-law contended that under permissive occupation the review Applicant is in enjoying the 1st floor and in the ground floor the mother-in-law is residing but on seeing the description of the sale deed the entire property still stands in the name of the review Applicant herein.



7. To substantiate the arguments the learned counsel for the review

Applicant relied on the Judgment of the Hon'ble Supreme Court in "**Civil Appeal No.14630 of 2015 (@SLP (c) No.10013 of 2015) Appaiya Vs. Andimuthu @ Thangapandi & Others, dated 20.09.2023**" , wherein it as been held as follows:

"21.Section 74 deals with documents which are public documetns. Sub-Section (2) thereof makes public records kept [in any state] of private documents within the purview of "public document" under Section 74. Going by Section 76, certified copies of public documents shall be given, on demand, by the public officer having the custody of public document, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title. Such copies so certified shall be called certified copies in terms of Section 76.

22. It is to be noted that in the case on hand, a certified copy of Exhibit A1 sale ded dated 27.08.1928 was produced by the appellant. As noted earlier, the Courts below found that it is registered with the Sub-Registrar's Office. The contention of respondent(s) is that it is only a certified copy and not the original document. In the light of the aforementioned provisions



under the Evidence Act there can be no doubt with respect to the permissibility for the production of such a certificate copy as secondary evidence in law, in regard to the existence, condition or contents of a document. As per Section 77 of the Evidence Act such certified copies may be produced in proof of the contents of the public document concerned. Section 79 deals with presumption as to genuineness of certified copies. Section 77 and 79 of the Evidence Act reads thus:-

" 77.Proof of documents by production of certified copies:- Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

79. Presumption as to genuineness of certified copies:- The Court shall presume (to be genuine) every document purporting to be a certificate, certified copy or other document, which is by Law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer (of the Central Government or of a State Government, or by any officer (in the State of Jammu and Kashmir) who is duly authorized thereto by the Central Government):

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper."

23. In view of the provision under Section 79 of the Evidence Act, Section 57(5) of the Registration Act assumes relevance in the context of the case and it reads thus:



"57.Registering officers to allow inspection of certain books and indexes, and to give certified copies of entries.-

(1)..

(2)..

(3)..

(4)..

(5). All copies given under this Section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents."

8. While disposing the second appeals this Court relied on the evidence of the parties as well as the non production of the original Power of Attorney and dismissed the appeals by confirming the findings of the Courts below.

9. The learned counsel for the review Applicants submitted that, both the parties have not approached the Court for declaration of title but only for permanent injunction. As on date sale deed still stands in the name of the review Applicants who is having better title since the documents have not been cancelled through Court of law. The learned counsel for the review Applicants further submitted that under the influence of the police the mother-in-law gave false complaint against the Review Applicants and forcibly evicted and prevented them from running the garments shop.



Admittedly, the mother-in-law and father-in-law, are Senior citizen. Based on their complaint, FIR was lodged, pursuant to which the review Applicants obtained bail on condition to pay a sum of Rs.10,000/- to each of them as maintenace and the same was complied by the review petitioners as on date, though they refused to receive. So the fact reveals that after disposal of the second Appeals the Mother-in-law forcibly took possession with the help of the police is the submission made by the review petitioners.

10. If at all, respondent / mother-in-law is having any valid right she has to work out the remedy through Court of law and not by force, therefore the police authority should not cause any interference in the review Applicants enjoyment of the Suit property.

11. Hence, the submission made by the Review Applicants and the reason assigned to rehear the matter is permissible under law for the reason that till the Power of Attorney is in force. As per the report of the District Registrar, if opportunity is not given to the review Applicants to prove their case they will be put much hardships.



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WEB COPY 12. Accordingly, these Review Applications are allowed and the common Judgment passed by this Court in S.A. Nos. 1198 & 1199 of 2008, on 05.03.2021 are reviewed and allowed. Consequently, connected Miscellaneous petitions are closed. No costs.

27.09.2023

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Index : Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



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T.V.THAMILSELVI, J.

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