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CRP No.3384 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2023

CORAM:

THE HONOURABLE Mr. JUSTICE LAKSHMI NARAYANAN

CRP No.3384 of 2019

K.Shanmugavel Mudaliar ... Petitioner

Vs

A.Thirugnanasambandam ... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 25.04.2019 made in I.A.SR.No.4001 of 2019 in O.S.No.622 of 2005 on the file of Additional District Munsif Court, Alandur.

For Petitioner : Mr.M.Selvam

For Respondent : Mr.T.K.S.Muthukumaran
for Mr.N.V.N.Margandeyan

ORDER

This Civil Revision Petition arises against an order passed in unnumbered I.A.SR.No.4001 of 2019 in O.S.No.622 of 2005 on the file of Additional District Munsif Court, Alandur.



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2. The revision petitioner before me is the plaintiff in the suit.

Claiming to be a hereditary trustee, he presented a suit for ejectment. After receiving written statement and after full trial, the suit was dismissed on 19.02.2019. Immediately, a review was filed on 08.04.2019 and the review petition was also dismissed. The learned Judge did not find any error apparent on the face of the record. Challenging the same, the present revision has been filed.

3. Mr.M.Selvam, learned counsel for the revision petitioner brought to the notice of this Court the case laws in ***(i) Board of Control for Cricket in India and Another vs Netaji Cricket Club and Others (2005) 4 SCC 741 (ii) T.Manickam vs C,Suthanthiram, CRP (PD)No.647 of 2008 dated 02.04.2008 and (iii) P.Paranthaman vs Munirathinam, CRP (NPD)No.3260 of 2008 dated 27.07.2009*** and would urge that the learned District Munsif has the power of review and hence he ought to have reviewed the judgment and set aside the same.



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4. Condition precedent for review is on an error apparent on the face of the record. In this case, when there is no error apparent, the learned counsel for the plaintiff wanted the Court to treat it as such and decide as if it is a court of appeal and decide the matter accordingly. A review is not an appeal in disguise. Therefore, it was rightly rejected by the learned District Munsif.

5. Turning to the judgments, in the case of ***Board of Control for Cricket in India and Another vs Netaji Cricket Club and Others (2005) 4 SCC 741***, in paragraph No.88, the Apex Court has laid down the scope of Order 47 Rule 1 of Civil Procedure Code. As already discussed, the learned Judge has gone into the merits of the petition and held that there is no error apparent on the face of the record and therefore, he has not exercised the power of review. Hence the judgment is inapplicable.

6. The second decision relied upon is an order passed in ***T.Manickam vs C.Suthanthiram, CRP (PD)No.647 of 2008 dated 02.04.2008***. In that



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case, the learned District Munsif kept returning the review petition on the ground of no review is maintainable before the Munsif. There is a difference between returning the petition and rejecting the petition for review. Here is a case before me the petition has not been returned, but has been rejected on the ground that no grounds have been made out for reviewing of the judgment. Therefore, the order passed in ***T.Manickam vs C,Suthanthiram CRP (PD)No.647 of 2008 dated 02.04.2008***, relied upon by the learned counsel, is not applicable to this case.

7. Finally, the learned counsel would attempt to take the benefit of the order passed in ***P.Paranthaman vs Munirathinam, CRP (NPD)No.3260 of 2008 dated 27.07.2009***. This Court had taken note of the fact that at the time of hearing the review, learned counsel for the petitioner was not heard. The court had straight away passed the order on the merits of the case. Hearing of the counsel for parties is essential because no party is going to be in a position to find out what is the error apparent on the face of the record. Fortunately, in this case, the parties were heard and only



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thereafter, the application was rejected. Therefore, I have no other option than to confirm the order passed in I.A.SR.No.4001 of 2019 in O.S.No.622 of 2005. However, it is to be noted that the petitioner had moved review immediately on pronouncing of judgment on 08.04.2019. He has been bonafidely pursuing the matter from 08.04.2019 till 13.07.2023. The review petitioner is always free to file an appeal against the decree.

8. Insofar as the delay is concerned, if an appropriate application is filed before the Court below, it shall take into consideration of the fact that from 08.04.2019 till 13.07.2023, the revision petitioner was bonafidely pursuing this remedy and therefore, the said period could be excluded for the purpose of numbering the appeal.

9. With the above observation, the civil revision petition is dismissed.

No costs.

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Index:Yes/No

Speaking order/Non-speaking order

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V.LAKSHMINARAYANAN,J.

sr

To

The Additional District Munsif Court, Alandur

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