



REV.APLC(MD)Nos.68 and 99 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 07.11.2022

PRONOUNCED ON:13.02.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**REV.APLC(MD)Nos.68 and 99 of 2022
and
C.M.P.(MD)No.3108 of 2022**

Rev.Aplc(MD)No.68 of 2022

Kaliaperumal : Review Petitioner/1st Respondent

Vs.

1.Balakrishnan : 1st Respondent / Petitioner

2.Karuppaiah : Respondent/Respondent

PRAYER:- Review Application filed under Order 47 Rule 1 and 2 and Section 114 of the Code of Civil Procedure against the order passed by this Court in C.R.P.(PD)(MD)No.234 of 2021, dated 06.12.2021.

Rev.Aplc(MD)No.99 of 2022

Kaliaperumal : Review Petitioner/Petitioner

Vs.



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Santhi

: Respondent/Respondent

PRAYER:- Review Application filed under Order 47 Rule 1 and Section 114 of the Code of Civil Procedure against the order passed by this Court in C.R.P.(PD)(MD)No.330 of 2021, dated 06.12.2021.

For Petitioner
in both petitions : Mr.K.Baalasundharam

For Respondents :Mr.D.Parisuthanathan
in Rev.Aplc(MD)No.68 of 2022

: No Appearance
in Rev.Aplc(MD)No.99 of 2022

COMMON ORDER

Both the Review Applications are directed against the common order passed in C.R.P.(MD)Nos.234 and 330 of 2021, dated 06.12.2021, on the file of this Court.

2. The first defendant is the review petitioner in both the review applications. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit. The gist of the journey of the cases up to the review application is as follows:



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(a) The plaintiff has filed a suit claiming the relief of specific performance of the document dated 29.06.2009 in O.S.No.26 of 2010, on the file of the Subordinate Court, Pudukkottai. Since both the defendants had remained exparte, the decree was passed on 15.02.2011 granting the relief as prayed for by the plaintiff. Thereafter, the plaintiff has filed the execution petition in E.P.No.85 of 2011 for execution and registration of the sale deed. Since the defendants had again remained exparte, the Executing Court has executed the sale deed, dated 29.04.2013 and got the sale deed registered. Subsequently, the plaintiff has laid another execution petition in E.P.No.33 of 2016, seeking delivery of the suit property. The defendants had remained exparte in the second execution proceedings and hence, delivery was ordered on 28.08.2019. Thereafter, the plaintiff has taken possession of the suit property through Court and on that basis, the execution proceedings were ordered to be terminated on 02.12.2019.

(b) The first defendant's wife Shanthi has filed three applications, one is in E.A.No.168 of 2019, seeking possession of the suit property, second application in E.A.No.169 of 2019 for temporary injunction and the third one in E.A.No.170 of 2019 for appointment of Advocate



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Commissioner. During enquiry in E.A.168 of 2019, the said Shanthi has produced four documents and the same were exhibited as Exs.P.1 to P.4 on her side. At that juncture, the plaintiff/deGREE holder has filed a petition in E.A.No.11 of 2020 to eschew the documentary evidence adduced in Exs.P.1 to P.4 from the evidence, as they are inadmissible in evidence and to receive the report of the Commissioner and to record that the third party objector has no oral evidence and then to commence the enquiry from the side of the plaintiff's side. The Executing Court, after enquiry in E.A.No.11 of 2020, partly allowed the petition and dismissed the relief with respect to eschew of the documents in Exs.P.1 to P.4 from the records. Aggrieved by the said dismissal of his petition in part, the plaintiff/deGREE holder has preferred a revision in C.R.P.(MD)No.330 of 2021.

(c) The second defendant, who had remained exparte in the entire proceedings, has filed revision petition in C.R.P.(MD)No.234 of 2021, seeking quashment of execution proceedings in E.P.No.33 of 2016.

(d) This Court, on perusal of the materials available and the records which were sent for from the concerned Courts and on hearing



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the arguments of both sides, has passed the impugned common order dated 06.12.2021, allowing the revision in C.R.P.(MD)No.234 of 2021 and thereby quashing the entire proceedings in E.P.No.33 of 2016 and further directed the plaintiff/decreed holder to return back the possession of the suit property to the defendants within a period of four weeks from the date receipt of copy of that order and dismissed the revision in C.R.P. (MD)No.330 of 2021 as infructuous.

(e) This Court has further ordered that the judgment and decree dated 15.02.2011 passed in O.S.No.26 of 2010 and the sale deed dated 29.04.2013 executed in favour of the plaintiff by the Executing Court will be set aside on depositing a sum of Rs.2,00,000/- by the defendants before the trial Court within a period of four weeks from the date of receipt of a copy of that order, failing which, the judgment and decree dated 15.02.2011 and the sale deed dated 29.04.2013 shall remain in force and further directed the trial Court, on fulfilment of the above conditions, to set aside the judgment and decree and permitted the plaintiff to make necessary amendments in the plaint within fifteen days and to permit the defendants to file their written statement within 15 days thereafter and then to proceed with the trial and dispose of the case



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within three months thereafter. Aggrieved by the impugned common order, the plaintiff has come forward with the present Review Applications.

3. The main contention of the review petitioner/plaintiff is that the defendants/judgment debtors have not prayed to set aside the judgment of the trial Court, that the judgment passed on 15.02.2011 was set aside after the lapse of ten years and the same would cause irreparable loss to the decree holder, that the decree holder cannot be made responsible for the cryptic judgment passed by the trial Court, that the second defendant has suppressed the pendency of the petition filed under Order 9 Rule 13 C.P.C., at the time of revision, that the second defendant has given false affidavit as if he has gone abroad and remained there till 2019 and that the unregistered sale agreement relied on by the plaintiff is admissible as per the decisions of this Court.

4. The learned Counsel for the second defendant would submit that the review applications are legally not maintainable, that there is no apparent error on the face of the record warranting the review of the order, that the above review applications do not fit within the purview of



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Order 47 Rule 1 C.P.C., and that therefore, the review applications are liable to be dismissed.

5. A perusal of the Order 47 Rule 1 C.P.C., shows that the review of a judgment or an order could be sought (a) from the discovery of the new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important or evidence could not be produced by the applicant at the time when the decree was passed or the order made and (c) on account of some mistake or error apparent on the face of the record or any other sufficient reason. It is settled law that 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 Hon'ble Supreme Court in ***Parsion Devi and Others vs Sumitri Devi and Others*** reported in (1997)8 SCC 715, has observed thus:

“9. 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



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the face of the record justifying the court to exercise its power of review under Order 47 Rule I 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". “

6. In ***Lily Thomas, Etc. vs Union Of India and Others*** reported in **(2000)6 SC 224**, the Hon'ble Apex Court has held that the power of review can be exercised for correction of a mistake and not to substitute a view and such powers can be exercised within the limits of the statute dealing with the exercise of power. It is beyond any doubt or dispute that the review Court does not sit in appeal over its own order. It is settled law that a rehearing of the matter is impermissible in law. The word “review” would mean the act of looking offer something again with a view to correction or improvement. No doubt, the review is the creation of a statute and not an inherent power. It is also not an appeal in disguise. A judgment may be open to review *inter alia* if there is a mistake or an error apparent on the face of the record under Order 47 Rule 1 C.P.C. An error which is not self evident and has to be detected by



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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 to review under Order 47 Rule 1 C.P.C, and it is not permissible for an erroneous decision to be reheard and corrected, but a review petition must be remembered has a limited purpose and cannot be allowed to be an 'appeal in disguise'.

7. The learned Counsel for the review petitioners would contend that the plaintiff was in possession of the suit property till the lodging of the complaint of the first defendant's wife Shanthi and a case came to be registered in Cr.No.13 of 2010 of Thirumayam P.S., on 19.02.2010 under Sections 147, 148, 294(b), 353 and 506(ii) I.P.C., that the plaintiff was arrested and was in judicial custody, that the plaintiff has preferred a complaint to the Legal Service Authority, Thirumayam alleging that a false case was foisted against him and he was dispossessed from the suit property and that therefore, directed the authority to give suitable directions to the Thirumayam P.S., to redeliver the suit property and thereafter only the plaintiff was constrained to file execution petition for delivery of possession in E.P.No.33 of 2016.



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8. As rightly contended by the learned Counsel for the second respondent, this Court after reserving orders in the revisions, has sought for clarification as to how the plaintiff had taken the sale deed, as if he was not in possession and is entitled to take possession through Court proceedings, when he himself has admitted that he was in possession of the suit property on the date of the suit and was enjoying the injunction order protecting the possession till the disposal of the suit. At that time, the learned Counsel for the plaintiff has submitted an explanation that during the pendency of the suit, the plaintiff was dispossessed by the defendants forcibly and that is why the plaintiff was constrained to lodge the police complaint. This Court has then observed that the plaintiff has not filed the copies of the complaint alleged to have been given and the wife of the first defendant has lodged a complaint to the Chairman of the Taluk Legal Service Authority, Thirumayam, complaining that the plaintiff along with his henchmen has trespassed into the suit property and after throwing all household articles outside, locked the premises.

9. This Court, considering the above, has held that the plaintiff has not taken any steps to amend the plaint alleging his dispossession and for



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seeking the relief of possession. This Court has further observed that the judgment and decree dated 15.02.2011 does not speak about the possession and that the plaintiff has not obtained any decree for the recovery of the possession of the suit property. The present contention of the plaintiff that the complaint given by him and the reply given by the Legal Service Authority will disclose the action taken by the plaintiff seeking redelivery of the suit property, was not all raised, when this Court has specifically sought for clarification and it is only an after thought.

10. The learned Counsel for the plaintiff would further contend that the second defendant before filing the Civil Revision Petitions, has filed an application in I.A.No.332 of 2020 under Section 5 of the Limitation Act to condone the delay of 3298 days in filing the petition for setting aside the exparte decree and that the second defendant has purposely suppressed the pendency of the delay condonation petition and that the same would amount to material suppression.

11. In the common order, this Court has referred the petition filed under Section 5 of the Limitation Act by the first defendant and



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condoning the delay and that the dismissal of the petition filed under Order 9 Rule 13 C.P.C., for setting aside the exparte decree for default, as cost was not paid. No doubt, the second defendant has not stated about the pendency of his petition filed under Section 5 of the Limitation Act before the trial Court. It is pertinent to note that the plaintiff has also not whispered anything about the pendency of the said petition in I.A.No.332 of 2020. As rightly contended by the learned Counsel for the second defendant, the pendency of the delay condonation petition filed by the second defendant, by no stretch of imagination, can be considered as relevant or material point for deciding the Civil Revision Petitions. It cannot be stated that if the pendency of the delay condonation petition was brought to the notice of this Court, this Court could not have granted the reliefs given to the second defendant.

12. The learned Counsel for the petitioner would submit that the second defendant without exhausting the alternative remedies, filed the Civil Revision and this Court, by invoking powers under Article 227 of the Constitution of India, has quashed the entire execution proceedings and also set aside the exparte decree and the judgment and relied on the recent judgment of the Hon'ble Supreme Court in ***Mohamed Ali***



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Vs.V.Jaya and Others reported in **2022 AIAR (Civil) 879**, wherein the Hon'ble Apex Court has held as follows:

“7.1 Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand, the High Court ought not to have entertained the revision petition under [Article 227](#) of the Constitution of India against the exparte judgment and decree passed by the learned Trial Court in view of a specific remedy of appeal as provided under the Code of Civil Procedure itself. Therefore, the High Court has committed a grave error in entertaining the revision petition under [Article 227](#) challenging the exparte judgment and decree passed by the learned Trial Court and in quashing and setting aside the same in exercise of powers under [Article 227](#) of the Constitution of India.”

13. As rightly contended by the learned Counsel for the second defendant, the above referred judgment was passed on 11.07.2022, subsequent to the impugned common order and as such, the explanation to Order 47 Rule 1 C.P.C., is very much applicable, which is to the effect that the subsequent decision of the superior Court in any other case shall not be a ground for review of such a judgment. Moreover, in the said



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decision case, the dismissal of the petition filed under Section 5 of the Limitation Act by the first defendant has attained finality, that the defendants 2 to 4 have filed a petition under Section 5 of the Limitation Act to condone the delay of 2345 days in filing the petition for setting aside the exparte decree and that since the said delay condonation petition was dismissed, they have preferred a revision and whereas the first defendant has filed a revision for setting aside the exparte judgment and decree and that this Court has allowed the two revision petitions and thereby setting aside the exparte decree and judgment passed by the trial Court. The Hon'ble Supreme Court has observed that the High Court has committed a grave error in entertaining the revision petition under Article 227 of the Constitution of India, challenging the exparte decree and judgment passed by the trial Court and in quashing and setting aside the same in exercise of power under Article 227 of the Constitution of India. Since the facts of the case on hand are entirely different, the same cannot be made applicable.

14. The learned Counsel for the plaintiff would further contend that this Court has gone into the admissibility of unregistered sale agreement – Ex.A.1 and held that it is insufficiently stamped and



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unregistered document, that while exercising power under Article 227 of the Constitution of India, the same cannot be exercised as the Appellate Court appreciating the evidence that even the unregistered sale agreement is admissible even after the amendment in the Registration Act in the year 2012, as per the decisions of this Court in ***D.Devarajan Vs. Alphonsa Mary*** reported in ***2019(2) CTC 290*** and in ***G.Veeramani and N.Soundaramoorthy and others*** reported in ***2019(6) CTC 580***.

15. At the outset, it is pertinent to note that Ex.A.1 is titled as sale deed (கீழ்க் கிரைய சாசனம்) and the same is written in Rs.20/- stamp paper and unregistered and there was a specific averment that a sum of Rs.4,75,000/- was received and possession was handed over on that day itself.

16. This Court, on considering the recitals of Ex.A.1 has specifically observed that the said document can be considered as possessory contract of sale and that in the absence of the the defendants or even in the presence of the defendants and on their failure to raise objections, it is the duty of the Court to decide about the admissibility of



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the document and determine judicially about the admissibility of the documents with respect to the Stamp Act.

17. This Court, after referring to the judgment of the Andrapradesh High Court in *Syed Yusuf Ali Vs. Mohammed Yusuf and Others*, has held that the trial Court has failed to consider the admissibility of Ex.A.1 nor gave any finding with respect to the same. Even assuming that the finding in this regard is erroneous, that cannot be considered as a ground for review.

18. It is settled law that in exercise of review jurisdiction, the Court cannot re-appreciate the evidence to arrive at a different conclusion even if two views are possible in a matter. Under the garb of filing review petition, any party cannot be permitted to repeat old and over ruled arguments for reopening the conclusions arrived at in a judgment. It is pertinent to note that power of review is not to be confused with the power of appellate Court, which enables the superior Court to correct errors committed by a Subordinate Court.. The Hon'ble Supreme Court in *M/S Jain Studios Limited Through its President vs Shin Satellite Public Co. Ltd* in Review Petition (Civil) No.5970 of 2006,



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dated 11.07.2006, has observed as follows:

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“11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior Court to correct all errors committed by a subordinate Court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.”

19. Even assuming that the decision of this Court was erroneous on merits, the review power cannot be exercised. In ***Inderchand Jain (D) through LRs., Vs. Motilal (D) through LRs.***, reported in **2009(5) CTC 365**, the Hon'ble Supreme Court has specifically held that the power of review may not be exercised on the ground that the decision was erroneous on merits. As already pointed out, the plaintiff has canvassed the very same points that were already raised and decided by this Court.



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As already pointed out, the review petitioner cannot re-argue the matter on merits.

20. Considering the above, this Court is of the view that the review petitioner has not shown any error apparent on the face of the record or any other ground so as to attract Order 47 C.P.C., to interfere with the order of the revisional Court. Hence, this Court concludes that the both the review applications are absolutely devoid of merits and the same are liable to be dismissed.

21. In the result, both the Review Applications are dismissed. No costs. Consequently, the connected Miscellaneous Petitions is also dismissed.

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Internet : Yes : No

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PRE-DELIVERY JUDGMENT MADE IN

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