



Rev.Aplc(MD)No.51 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.06.2023

Pronounced on : 08.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

Rev.Aplc(MD)No.51 of 2022

in

C.M.P.(MD)No.1695 of 2022

1.Ayyathal
2.Krishnamoorthy
Narayanan (Died)
3.N.Ramesh
4.Indira

... Petitioners

Vs.

Jeyandiran (died)
1.Jeyaprakash
2.J.Ganesan
3.J.Narayanamoorthy
4.Muthukannu

... Respondents

PRAYER : This Review Application is filed under Order XLVII Rule 1 and Section 114 of the Code of Civil Procedure, to review the judgment and decree in S.A.(MD)No.886 of 2009 dated 30.10.2019 passed by this Court.

For Petitioners : Mr.S.Natarajan, Senior Counsel
For M/s.Vijayakumari Natarajan
For Respondents : Mr.S.Parthasarathy



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JUDGMENT

This Review Application is filed against the judgment and decree passed in S.A.(MD)No.886 of 2009 dated 30.10.2019. S.A.(MD)No.886 of 2009 was filed against the judgment and decree passed in A.S.No.86 of 2001 dated 28.11.2007 on the file of the learned Sub Judge, Sivagangai confirming the judgment and decree passed in O.S.No.167 of 1998 dated 27.08.2001 on the file of the learned Principal District Munsif, Manamadurai.

2.Against the order of this Court, the review petitioners have filed this review application on the following grounds:

Already a suit was filed in O.S.No.344 of 1990 on the file of the learned District Munsif, Manamadurai between the same parties. The earlier suit for partition ended in compromise between the parties. The suit in O.S.No.344 of 1990 was dismissed as compromise. In the earlier suit, Muthukannan, Jeyandran and Krishnamoorthy were seeking for partition of 3/6th share. The compromise outside the Court was recorded. In paragraph no.47, this Court has given a findings that there was no decree whereas there was a decree drafted by the trial Court in O.S.No.344 of 1990 and there is an error apparent



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on the face of the records and the matter requires review. Without setting aside the decree, the earlier decree is subsisting and two separate suits for same prayer cannot be entertained.

3.The learned counsel for the petitioners would rely upon a judgment of the Hon'ble Supreme Court in the case of ***Commissioner of Customs and Central Excise v. Hongo India Private Limited and another*** reported in ***(2009) 5 Supreme Court Cases 791***, wherein it is stated as follows:

*“In para 17 of the abovementioned decision, it was held:
(M.M. Thomas case, SCC ;. 673)*

“17.If such power of correcting its own record is denied to the High Court, when it notices the apparent errors its consequence is that the superior status of the High Court will dwindle down. Therefore, it is only proper to think that the plenary powers of the High Court would include the power of review relating to errors apparent on the face of the record.”

There is no doubt that the High Court possess all powers in order to correct the errors apparent on the face of record.”



4.The learned counsel for the petitioners would rely upon a judgment of the Hon'ble Supreme Court in the case of ***M.M.Thomas v. State of Kerala and another*** reported in ***(2000) 1 Supreme Court Cases 666***, wherein it is stated as follows:

“Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it the High Court has not only power, but a duty to correct it. The High Court's power in that regard is plenary.

Referring to the said passage and relying on the decision of this Court in Naresh Shridhar Mirajkar a two Judge Bench of this Court in M.V.Elisabeth v. Harwan Investment & Trading (P.) Ltd. has observed thus: (AIR Headnote).

Therefore, it is only proper to think that the plenary powers of the High Court would include the power of review relating to errors apparent on the face of the record.”

5.The learned counsel for the petitioners would rely upon a judgment of the Hon'ble Supreme Court in the case of ***Surjit Singh and others v. Union of India and others*** reported in ***(1997) 10 Supreme Court Cases 592***, wherein it is stated as follows:



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“Review – Grounds for – patent error – mistake of law – Held, must be corrected by way of review – further held, leaving the mistake to be rectified by the Supreme Court is not proper – Administrative Tribunals Act, 1985, S. 22(3)(f) – Civil Procedure Code, 1908, OR. 47. R.1.”

6.The learned counsel for the petitioners would rely upon a judgment of this Court in the case of ***Palalni Roman Catholic Mission, rep. By rev. Father v. S.Bagirathi Ammal, rep. By her husband and power Agent, P.A. Venkatachalam*** reported in ***2001 3 L.W. 445***, wherein it is stated as follows:

“While one is acutely conscious of the very limited scope of review, one's hand are also not tied in circumstances where the error is apparent or there is an obvious or patent mistake, or is a palpable wrong. The power of review, it has been held, can be exercised not only when the facts set out in Order 47, Rule 1 C.P.C. Exist, but also on any analogous ground. Where the alleged error is self-evident, it cannot be argued that the review is not maintainable.

If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot



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on any principle be precluded from rectifying the error.”

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7.The learned counsel for the petitioners would rely upon a judgment of the Hon'ble Supreme Court in the case of ***Kamlesh Verma v. Mayawati and other*** reported in ***2013 STPL 18099 SC***, wherein it is stated as follows:

“Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

Mistake or error apparent on the face of the record;

Any other sufficient reason.

A repetition of old and overruled argument is not enough to reopen concluded adjudications.

A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.”

8.On the side of the review respondents, it is stated that the scope of review is limited and that the review petitioners cannot re-agitate the matter. The learned counsel for the respondents would rely upon a judgment of the Hon'ble Supreme Court in the case of ***Sivakami and others v. State of Tamil***



Nadu and others reported in **2018 (5) CTC 441**, wherein it is stated as follows:

“The scope of the appellate powers and the review powers are well defined. The power of Review under Order 47 Rule 1 of the Code of Civil Procedure, 1908 is very limited and it may be exercised only if there is a mistake or an error apparent on the face of the record. The power of review is not to be confused with the appellate power. The review petition/application cannot be decided like a regular Intra-Court Appeal. On the other hand, the scope of Appeal is much wider wherein all the issues raised by the parties are open for examination by the appellate Court.”

9.On the side of the review petitioners, it is stated that the review petitioners already settled money to the other share holders. If at all review petitioners failed to settle the amount, the respondents can file a suit for recovery of money and the respondents cannot claim partition when the earlier partition suit already ended in compromise. The compromise was not vitiated by fraud. The earlier decree was not set aside. As there was a decree, the observation made in paragraph no.47 of the order passed in S.A.(MD)No. 886 of 2009 is wrong.



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10.The learned counsel for the petitioners would rely upon a judgment of the Hon'ble Supreme Court in the case of ***Byram Pestonji Gariwala v. Union Bank of India and others*** reported in ***(1992) 1 Supreme Court Cases 31***, wherein it is stated as follows:

“A judgment by consent is intended to stop litigation between the parties just as much as judgment resulting from a decision of the Court at the end of a long drawn out fight. A compromise decree creates an estoppel by judgment.”

11.The learned counsel for the petitioners would rely upon a judgment of the Hon'ble Supreme Court in the case of ***P.T.Thomas v. Thomas Job*** reported in ***(2005) 6 Supreme Court Cases 478***, wherein it is stated as follows:

“On this authority it becomes absolutely clear that the consent order is as effective as an order passed on contest, not only with reference to the conclusions arrived at in the previous suit but also with regard to every step in the process of reasoning on which the said conclusion is founded.”



12.The learned counsel for the petitioners would rely upon a judgment of the Hon'ble Supreme Court in the case of ***Compact Enterprises India Pvt Ltd., v. Beant Singh*** reported in ***2021 (4) CTC 119***, wherein it is stated as follows:

“Before adverting to the specific contentions raised by the learned Senior Counsel for the petitioner, it may be useful to briefly summarize the law governing Consent Decrees that shall inform our conclusions on the present matter. It is well settled that Consent Decrees are intended to create estoppels by judgment against the parties, thereby putting an end to further litigation between the parties.”

13.The learned counsel for the petitioners would rely upon a judgment of the Hon'ble Supreme Court in the case of ***Sree Surya Developers and Promoters v. N.Sailesh Prasad and others*** reported in ***2022 (4) CTC 495***, wherein it is stated as follows:

“Bar under Order 23 Rule 3-A, or voidable -trial Court justified in rejecting plaint in view of bar under Order 23, Rule 3-A, - Appeals allowed – order passed by trial Court rejecting plaint, restored.”



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14.The learned counsel for the petitioners would rely upon a judgment of the Hon'ble Supreme Court in the case of ***K.Arumuga Velaiah v. P.R.Ramasamy and another*** reported in ***2022 (1) CTC 698***, wherein it is stated as follows:

“29.Having regard to the fact that in the instant case, there has been no challenge to the finding of Partition between the parties till date and the same has attained finality we do think that the appellant can seek to rely on the judgment in Asrar Ahmed (Supra). Hence, the partition of the ancestral/Joint Family properties having found to have taken place in the 1964 and the same having been acted upon, a fresh suit for partition and separate possession of the suit properties was not at all maintainable. The Principle of Res judicata squarely applies in the present case.”

15.On the side of the review respondents, it is stated that recording an endorsement as matter settled out of the Court cannot be termed as a decree in its right sense and that the meaning of word 'decree' as per Section 2 of the CPC is as follows:

““decree” means the formal expression of an adjudication



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*which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within 3*** section 144, but shall not include—*

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default. Explanation.—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;”

16.A decree is a formal expression of adjudication and it determine the rights of party either preliminary or final. A settlement out of Court was just taking note or recording what has happening. Since no judicial act was involved, recording the settlement out of Court cannot be taken as a decree in its proper sense.



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17. On the side of the review respondents, it is stated that when a compromise petition was filed and terms of compromise was given, the Court used to verify the legality of the compromise. The Court will verify the consent of the parties. After verification of the above facts, the compromise will be recorded and such term of compromise shall form part of the decree. In the case on hand, no such compromise was recorded.

18. It is further stated that no document was filed to prove that Rs. 10,000/- was fixed for the share for each party to be paid by the review petitioners. Being a suit for partition, when there is no severance of status of the parties, the parties are entitled for partition. In the written statement filed by the petitioners, nowhere it was stated that some amount was settled. Re appraisal or re-argument cannot be done in the review petition. All the points raised by the review petitioners already raised by the petitioners in the main petition. A question of law as to res judicata was raised by the petitioners and in paragraph nos. 25, 30, 33, 47 and 49, this Court has discussed all the points and has given a conclusion which clearly reveals that this Court has applied its mind. The Court has decided that recording of a settlement out of the Court is not a compromise decree.



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19.The learned counsel for the respondents would rely upon a judgment of this Court in the case of ***Ramakrishnan v. Executive Officer and another*** reported in ***CDJ 2021 MHC 3250***, wherein it is stated as follows:

“A reading of Section 11 would indicate that the former suit should have been between the same parties or parties claiming under the party in the former suit and should have been finally heard and decided by the Court. No doubt, in the instant case, the plaintiff is claiming only under Krishnaveniammal who was the plaintiff in the earlier suit. However, the earlier suit has not been heard on merits. The suit was dismissed as not pressed. Likewise, if the provisions of Order IX Rule 9 of the Code of Civil Procedure is taken note of, once again the language of the provision would indicate that it is the very same plaintiff who is precluded from bringing on the fresh suit and not another plaintiff.

Therefore, the dismissal of the earlier suit in O.S.No.251 of 2005 would not be a bar on the instant suit and therefore, the Additional Substantial Question of law-1 is answered in favour of the plaintiff.”

20.It is seen that the earlier suit in O.S.No.344 of 1990 was filed



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between the parties for a prayer of partition. That suit was closed as settled out of Court. The citations put forth by the review petitioners were with regard to compromise decree. There is difference between a compromise decree and a decree recording a memo as settled out of Court. Specific terms and conditions for the compromise will be annexed to a compromise petition. In a compromise decree, after verifying the terms and conditions and after verifying the consent of the parties, the compromise will be recorded and that terms and conditions of the compromise decree will form part of the decree. Here in O.S.No.344 of 1990, no such terms of compromise was recorded and no compromise was recorded. Recording a memo as “settled out of Court” cannot be termed as determining the rights of the parties and recording a memo cannot be taken as res judicata under Order 11. Already the review petitioners have argued the very same issue regarding Order 11 and the same was already discussed by this Court. The review petitioners want to re-argue the very same point before this Court.

21.The scope of a review application is very limited. The judgments cited on the side of the review petitioners are not applicable to the facts of the present case. By filing review application, the review petitioners want to re-



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agitate the entire case again. There is no error apparent on the face of the earlier order.

22.In the view of the above facts and circumstances, this review application is dismissed and the judgment and decree passed in S.A.(MD)No. 886 of 2009 dated 30.10.2019 is confirmed. No Costs.

08.06.2023

NCC: Yes / No
Index: Yes / No
Internet : Yes / No
Mrn

To

- 1.The Sub Judge, Sivagangai.
- 2.The Principal District Munsif, Manamadurai.
- 3.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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R.THARANI, J.

Mrn

Pre - Delivery Judgment made in
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