



Rev.Aplc.(MD)No.137 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.04.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Rev.Aplc(MD)No.137 of 2015

in

C.M.P(MD)No.12213 of 2004

in

S.A.No.1034 of 1988

and

C.M.P(MD)No.931 of 2022

S.Ravichandran
Through his Power Agent
Mrs.S.Chellamma

....Petitioner/Respondent/
Respondent

-Vs-

Thiruvengadam(Died)
2.Mrs.Rajavi Thiruvengadam
3.Jeyashri Prakash
4.Nithya Shree Giridhar
6.Nirupama Enamandra

...Respondents/Petitioner/
Appellant

(R2 to R6 are brought on record as
LRS of the deceased sole respondent vide
Court order dated 16.08.2021)



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PRAYER: Review application filed under Section 114 r/w Order 47 Rule 1 of C.P.C., against the order dated 24.09.2014 made in C.M.P.No.12213 of 2004 in S.A.No.1034 of 1988 passed by this Court.

For Petitioner :Mr.Ananth C.Rajesh
(No appearance)

For R2 to R6 : Mr.S.Ramesh

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ORDER

The review petitioner filed a civil suit against the respondent in O.S.No.362 of 1983 on the file of the first Additional Sub-Court, Madurai, for specific performance of contract. The said suit was dismissed on 28.10.1986. Against which, an appeal was filed in A.S.No.212 of 1987 before the Principal District Court, Madurai. That appeal was allowed and the suit was decreed on 17.03.1988. Challenging the said judgment, the respondent herein filed a second appeal in S.A.No.1034 of 1988 before the Principal Bench of this Court and the same was dismissed on 25.01.2000.



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2.Since the aforesaid appeal was dismissed on merits on 25.01.2000, without hearing the learned counsel appearing for the respondent. Therefore, the respondent herein/appellant filed a petition for restoration in the year 2004 in C.M.P.No.12213 of 2004 and the same was allowed. Against the said order of restoration of the second appeal passed in C.M.P(MD)No.12213 of 2004, the present review petition has been filed.

3.The learned counsel appearing for the review petitioner would submit that without challenging the judgment and decree made in the second appeal before the Hon'ble Supreme Court, the respondent filed a restoration petition belatedly only in the year 2004 in C.M.P.No.12213 of 2004 without filing any petition to condone the delay. The said C.M.P was heard by this Court on several occasions and the Court was not willing to hear the respondent, since no vakalat was available in the said case for the respondent. Whenever the Court questioned about the availability of vakalat, the respondent was unable to answer the same. The learned counsel further would submit that to safeguard the officials of the Registry of this



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Court, the said restoration petition was allowed by this Court on erroneous circumstances on 24.09.2014. Since the above order was not passed on merits, only at the interest of the officials of the Registry of this Court alone taken for consideration. The said petition was filed by the review petitioner in the capacity of power of attorney of the respondent in this second appeal on 23.02.20015. The registrar of this Court wanted to verify the original power of attorney deed. the original power of attorney given by the respondent was filed in another case in A.S.No.6 of 2012 on the file of the I Additional District Court, Madurai. Therefore, he was unable to get back the power of attorney. Further, the learned counsel would submit that once the appeal was dismissed on merit and the same can be challenged before the Hon'ble Supreme Court, but, the application for restoration is not maintainable. The learned Judge failed to appreciate the same and allowed C.M.P.No.12213 of 2004 and restored the second appeal. Therefore, there is an error apparent on the face of the record. Therefore, the order passed by this Court in C.M.P.No.12213 of 2004 is liable to be set aside and M.P is to be heard afresh.



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4.The learned counsel appearing for the respondent would submit that in the second appeal the learned counsel could not appear, since he filed change of vakalat and that the name of the counsel on record was not printed. Therefore, he was not heard by this Court and the second appeal was dismissed on merits. Therefore, without hearing and without giving an opportunity, under wrong impression it was heard from the learned counsel on record and it was disposed of on merits. Therefore, the respondent filed an application for restoring the said appeal, even though it is passed on merits without hearing the learned counsel for the appellant. Therefore, this Court rightly set aside the order passed in the second appeal and allowed the C.M.P and restored the second appeal and there is no error apparent on the face of the records.

5.A careful reading of the order passed by this Court in C.M.P.. (MD)No.12213 of 2004, dated 24.09.2004, wherein this Court has mentioned the reasons for allowing the said C.M.P and set aside the judgment and decree passed in the second appeal. For better appreciation, Paragraph Nos.4 to 6 of the said judgment is extracted hereunder:



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“4.It is an admitted fact that the petitioner as appellant has filed Second Appeal No.1034 of 1988 on the file of this Court against the judgment and decree passed by the First Appellate Court in Appeal Suit No.212 of 1987. It is also equally an admitted fact that initially Advocate Thiru.L.K.Sankaran, has appeared for the petitioner/appellant. Further it is seen from the records being maintained by the High Court that on 22.11.1999, the present Advocate has filed vakalat for the appellant in Second Appeal No.1034 of 1988. But his name has not been brought on record not mentioned in the concerned cause list.

5.Further this Court has perused the Judgment rendered in Second Appeal No.1034 of 1988. No where it has been specifically stated that both the counsel have advanced their rival arguments.

6.Considering the fact that a stupendous mistake has been committed by the Registry and also considering that no indication is found place in the judgment rendered in second appeal No.1034 of 1988 to the effect that the counsel of both parties have advanced their respective argument, it is needless to say that the Judgment passed in



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Second Appeal No.1034 of 1988 has not been passed on merit. Under the said circumstances, the present petition can be allowed.”

6.In view of the above, when the judgment was passed on merits in the second appeal, the counsel on record had not appeared and also the learned Judge has given a reason for setting aside the judgment in second appeal. Therefore, if at all, the petitioner/appellant is aggrieved over the said order, he has to challenge the order in the manner known to law.

7.On a perusal of the affidavit filed by the review petitioner and the order of this Court dated 24.09.2004 passed in C.M.P(MD)No.12213 of 2004 and also considering the submission made by the learned counsel for the petitioner, it is found that there is no error apparent on the face of the records. Therefore, this Court finds that there is no merit in the review application and this Court does not find any error apparent on the face of the records.



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8.In the result, the review application is dismissed. No costs.
Since the second appeal is pending from 1988, this Court is inclined to take up the second appeal and decide the same on merits, after giving an opportunity of both the counsel. Consequently, connected C.M.P is closed.

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NCC:Yes/No

Index:Yes/No

Internet:Yes/No



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