



Rev.aplc(MD).No.95 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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JUDGMENT RESERVED ON : 07.09.2023

JUDGMENT PRONOUNDED ON : 22.09.2023

CORAM

THE HON'BLE MR. JUSTICE R.VIJAYAKUMAR

REV.APLC(MD)No.95 of 2019

and

CMP(MD).No.4653 of 2019

S.Jawahar

...Petitioner

Vs

1.K.Kandasamy

2.K.Krishnammal

3.K.Sankarapandian

4.The Sub-Registrar
Tallakulam Sub Registrar Office
Madurai 625 002

...Respondents

Prayer:- Review Application filed under Section 114 Order 47 Rules 1 & 2 of C.P.C, to review the order dated 10.01.2019 in CRP(MD).No.1252 of 2015.



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For Appellant	: Mr.K.Guruchev
For R1	: Mr.N.Anantha Padmanaban Senior Counsel For M/s.APN Law Associates
For R4	: Mr.C.Satheesh Government Advocate
For R2 & R3	: No appearance

JUDGMENT

The present review application has been filed by the first respondent in CRP(MD).No.1252 of 2015 seeking to review the order dated 10.01.2019.

2.One Sankarapandian who is admittedly the owner of the property had created a mortgage in favour of one Krishnammal. The said Krishnammal had filed O.S.No.254 of 2002 on the file of the I Additional Subordinate Court, Madurai for recovery of money based upon mortgage. A preliminary decree in the said suit was passed on 30.04.2002. The decree holder filed I.A.No.180 of 2005 for passing of final decree and the same was passed on 16.09.2005.

3.The decree holder in O.S.No.254 of 2002 had filed E.P.No.21 of 2006 to bring the mortgage property for sale and the sale was effected on 03.11.2008. The review petitioner who is the first respondent in the revision



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namely Jawahar was the successful auction purchaser. He had deposited the entire sale consideration on 12.11.2008. The Judgement Debtor in O.S.No. 254 of 2002 had filed E.A.No.146 of 2009 to set aside the same. The minor children of the judgment debtor had filed E.A.No.803 of 2008 claiming share in the said property. In view of the pendency of these two applications, sale certificate was not issued.

4.The said owner namely Sankarapandian had executed a sale agreement through his power of attorney Pitchai in favour of one Kandasamy on 28.04.1999. The said agreement holder had filed O.S.No.155 of 2004 before the II Additional Subordinate Court, Madurai. The said suit was decreed on 10.06.2008. The decree holder in O.S.No.155 of 2004 had filed E.P.No.166 of 2008 for execution of sale deed and the sale deed was executed by the Court on 14.08.2013 and registered as Document No.2963 of 2013 before the Sub-Registrar, Tallakulam. On the basis of this sale deed, the decree holder in O.S.No.254 of 2002 had filed E.A.No.45 of 2015 to implead the decree holder in O.S.No.155 of 2004 in whose favour the sale deed had been executed by the Court on 14.08.2013.

5.When E.A.No.45 of 2015 came up for hearing on 05.03.2015, the decree holder in O.S.No.254 of 2002 had chosen to not press the said



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application. The Court had issued a sale certificate on 05.03.2015 in favour of the auction purchaser namely Jawahar which was registered before the Sub-registrar, Tallakulam on 10.03.2015 as Document No.821 of 2015.

6.Having come to know about the sale certificate issued by the Court in favour of the auction purchaser in O.S.No.254 of 2002, the decree holder in O.S.No.155 of 2004 (Kandasamy) had filed the revision before this Court in CRP(MD).No.1252 of 2015 seeking to set aside the sale certificate.

7. After hearing both the parties, this Court arrived at a conclusion that the review petitioner namely Jawahar is an auction purchaser arising out of a money decree whereas the revision petitioner is a decree holder in a specific performance suit. The revision Court further found that the sale in favour of Kandasamy namely the revision petitioner is always subject to the mortgage and the said Kandasamy had agreed to discharge the entire mortgage amount along with interest and costs. The sale deed in favour of Kandasamy is dated 14.08.2013 which is prior to the sale certificate issued in favour of Jawahar on 05.03.2015.

8.On the basis of the above said findings, the revision Court set aside the sale certificate on the condition that the revision petitioner namely Kandasamy has to deposit the entire E.P amount with subsequent interest



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and costs. Aggrieved over the said order, the present Review Petition has been filed by the auction purchaser in O.S.No.254 of 2002 namely Jawahar.

9. According to the learned counsel for the review petitioner, the revision petitioner namely Kandasamy was not even a party to the order dated 05.03.2015. Therefore, he has no locustandi to challenge the sale certificate. He had further contended that though the said Kandasamy had contended that he was in possession of the property on payment of 99% of sale consideration, no proof has been filed before the Court. The learned Counsel had further contended that without properly appreciating the factual and legal background, the revision Court had set aside the sale certificate which has been properly issued in O.S.No.254 of 2002. Hence, he prayed for reviewing the order dated 10.01.2019 and to rehear the revision petition.

10. Per contra, the learned counsel for the respondents had contended that the grounds of review do not point out any error apparent on the face of the record warranting the Court to interfere in the review application. The revision Court had considered the submissions on either side and has arrived at a finding that the sale deed in favour of the revision petitioner is two years prior to the sale certificate issued in favour of the review



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applicant. Hence, he prayed for dismissing the review application.

WEB COPY 11.I have considered the submissions made on either side and perused the material records.

12.The learned counsel for the review applicant had made elaborate oral submission and also submitted the written arguments. His entire submissions would clearly reveal that the review applicant is attempting to reargue CRP(MD).No.1252 of 2015 which does not fall within the scope of Order 47 Rule 1 C.P.C. The alleged errors or mistakes which are pointed out by the learned review petitioner squarely fall within the ambit of merits of the case and this Court exercising its power under Order 47 Rule 1 C.P.C cannot enter into a discussion on merits of the order passed in the revision petition. Under the guise of review, revision in CRP(MD).No.1252 of 2015 cannot be reargued. No error apparent on the face of the record which could be deciphered without going through the other documents, could be pointed out.

13.The Hon'ble Supreme Court in a judgment reported ***in (1997) 8 SCC 715 (Parsion Devi and others Vs. Sumitri Devi and others)*** in paragraph No.9 has held as follows:

“9.Under Order 47 Rule 1 CPC a judgment may be open



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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 the face of the record justifying the court to exercise its power review under Order 47 Rule 1 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 limited purpose and cannot be allowed to be "an appeal in disguise."

14.In view of the limited scope available to the Court to review the order, this Court is not in a position to consider the plea raised by the review applicant on merits of the order passed in CRP(MD).No.1252 of 2015. It is for the review applicant to work out his remedy in a manner known to law.

15.In view of the above said facts, this Review Application stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.09.2023

Index: Yes/No
Internet: Yes/No
NCC : Yes/No
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The Sub-Registrar
Tallakulam Sub Registrar Office
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R.VIJAYAKUMAR, J.

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Pre-Delivery Judgment made in
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