



Rev.aplc(MD).Nos. 34, 60 & 63 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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JUDGMENT RESERVED ON : 22.09.2023

JUDGMENT PRONOUNDED ON : 05.10.2023

CORAM

THE HON'BLE MR. JUSTICE R.VIJAYAKUMAR

REV.APLC(MD)Nos. 34, 60 & 63 of 2023
in
CRP(MD).Nos.130, 386 & 352 of 2023

REV.APLC(MD)No. 34 of 2023

D.Susila

....Petitioner

Vs

Basheer Ahamed (died

1.Faritha Begum

2.Balasubramaniyan

3.Poongothai

...Respondents

REV.APLC(MD)No. 60 of 2023

D.Susila

....Petitioner

Vs

1.Balasubramaniyan

Basheer Ahamed (died

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2.Faritha Begum

3.Poongothai

...Respondents

REV.APLC(MD)No. 63 of 2023

D.Susila

....Petitioner

Vs

1.Ilangovan

Basheer Ahamed (died

2.Faritha Begum

3.Balasubramaniyan

4.Poongothai

...Respondents

Prayer in Rev.Aplc(MD).No.34 of 2023:- Review Application filed under Section 114 and Order XL VII Rule 1 of C.P.C, to review the order dated 16.02.2023 made in C.R.P(MD).No.130 of 2023 on the file of this Court.

Prayer in Rev.Aplc(MD).No.60 of 2023:- Review Application filed under Section 114 and Order XL VII Rule 1 of C.P.C, to review the order dated 16.02.2023 made in C.R.P(MD).No.386 of 2023 on the file of this Court.



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Prayer in Rev.Aplc(MD).No.63 of 2023:- Review Application filed under Section 114 and Order XL VII Rule 1 of C.P.C, to review the order dated 16.02.2023 made in C.R.P(MD).No.352 of 2023 on the file of this Court.

For Appellant : Mr.A.Arumugam
for all the Rev.Applications

For Respondents : No appearance for R1
& Mr.P.Pethurajesh
For R2 in Rev.Aplc.No.34 of 2023

: Mr.R.J.Karthick
For R3 in all the Rev.Applications

:Mr.S.A.Ajmalkhan
For R1 in Rev.Apl.Nos.60 & 63 of 2023

JUDGMENT

All the review applications have been filed seeking to review the order dated 16.02.2023 made in CRP(MD).Nos.130, 386 & 352 of 2023.

2.The review applicant is the fourth respondent in CRP(MD).No.352 of 2023, petitioner in CRP(MD).No.130 of 2023 and third respondent in CRP(MD).No.386 of 2023.

3.By an order dated 16.02.2023, this Court had dismissed the civil revision petitions confirming the order passed by the Rent Controller wherein this Court had relegated all three parties to approach the civil Court



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to decide the title so as to claim rental arrears deposited by the tenant. This

Court had further found that one Balasubramaniyan and Ilangovan are claiming under a registered Will said to have been executed by Palaniyappa Nadar on 28.06.2000, whereas the other parties are making a claim to the properties on the basis of an unregistered Will said to have been executed by the said Palaniyappa Nadar on 18.06.2001 in favour of the children of Balasubramaniyan.

4.The learned counsel appearing for the review applicant had contended that the said Palaniyappa Nadar had executed an unregistered Will on 18.06.2001 in favour of the sons of Balasubramaniyan namely Karthik Raja and Meenakshi Sundaram who in turn have executed a settlement deed in favour of one Poongothai. The said Poongothai had sold the property to one Susila who is the review applicant herein. He had further contended that the rival claimants namely Balasubramaniyan and Ilangovan are making a claim over the rental arrears only on the basis of the first Will dated 18.06.2001. However, the said Balasubramaniyan had challenged the second Will in O.S.No.33 of 2016 before the Principal Subordinate Court, Dindigul and he had chosen to withdraw the same on 15.09.2021. In the said suit, the said Poongothai, Susila and Ilangovan were



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also the parties. However, the purchaser from Balasubramanian namely Ilangovan has not chosen to raise any objection for withdrawal of the said suit.

5.The learned counsel appearing for the review applicant had further contended that the said Balasubramaniyan had entered into a registered partition deed with his brother Kalirajan on 10.10.2005. In the said partition deed, he had admitted the genuineness and validity of the second Will dated 18.06.2001 and the properties covered under the second Will were excluded in the said partition deed. Therefore, according to the learned counsel for the review applicant, there is no title dispute warranting relegation of the parties to a civil Court. However, this Court had confirmed the order of the Rent Controller and directed the parties to approach the civil Court. Hence, he prayed for allowing the revision applications.

6.Per contra, the learned counsels appearing for the respondents had contended that merely because the said Balasubramaniyan had withdrawn O.S.No.33 of 2016, it does not mean that the Will dated 18.06.2001 had been proved in accordance with law. The said Will was not produced before the Rent Controller. Unless the Will is proved in a manner known to law, the review applicant cannot contend that she has become the absolute



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owner of the property. They further contended that the said

Balasubramaniyan had executed a registered sale deed in favour of Ilangovan on 02.08.2016 and thereafter, he had chosen to withdraw O.S.No. 33 of 2016. Therefore, it is clear that collusion has taken place among the family members. Hence, they prayed that the orders does not call for any review.

7.I have carefully considered the submissions made on either side and perused the material records.

8.This Court has passed an order dismissing the revision petitions on 16.02.2023 relegating the parties to approach the civil Court in order to establish their title. The present civil revision petitions arose out of an order passed by the Rent Controller refusing to permit three competing landlords to receive the rental arrears deposited by the tenant. It would not be proper by this Court to decide the title of the parties in the revision petitions. That apart, as rightly contended by the learned counsels appearing for the respondents the second Will dated 18.06.2001 has not been placed on record either before the Rent Controller or before this Court.



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9.The Hon'ble Supreme Court in a judgement reported in **(1997) 8**

WEB COPY **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 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 of 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."

10.The Hon'ble Supreme Court in a judgment reported in **(2006) 5**

SCC 501 (Jain Studios Ltd., Through its President Vs. Shin Satellite Public Co.Ltd.,) in Paragraph No.11 has held as follows:

“11....Once such a prayer has 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



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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.”

11. In view of the judgements of the Hon'ble Supreme Court cited supra, this Court is not inclined to rehear the same submissions that were made during the hearing of the revision petitions. Considering the limited scope available to the Court, in the exercise of the powers under Order 47 Rule 1 of C.P.C, this Court is not inclined to entertain the review applications. There are no merits in the Review Applications. All the Review Applications stand dismissed. No costs.

05.10.2023

Index: Yes/No
Internet: Yes/No
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R.VIJAYAKUMAR, J.

msa

Pre-Delivery Judgment made in
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in
CRP(MD).Nos.130, 386 & 352 of 2023

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