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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.06.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

REV.APLC.W(MD)No.163 of 2022

in

S.A.No.873 of 1996

and

Cross.Obj.No.83 of 2000

Manjula Devi

... Petitioner

vs.

1.K.Janakiammal (Died)

2.Sankarapandian (Died)

3.Mariappan

4.Samiappan

5.Saraladevi

6.Rajendran

7.Maheswari (Died)

8.Mallika

9.Ayyachami Nadar (Died)

... Respondent

PRAYER: Review Application filed under Order 47 Rule 1 & 2 r/w Section 114 of CPC to review the order dated 22.10.2018 in the Second Appeal No.873 of 1996 and the Cross Objection No.84 of 2000 on the file of this Court.



For Petitioner : Mr.M.Arumugam
R1, R2, R7 and R9: Died
R4 : Left
R5 and R6 : Deceased
For R3 : Mr.P.Athimoolapandian

ORDER

The Review Application has been filed under Order 47 Rule 1 and 2 of CPC and Section 114 of CPC by the first respondent in the second appellant/appellant in the Appeal Suit/first defendant in the Original Suit seeking review of a judgment of this Court, dated 22.10.2018 in S.A.No. 873 of 1996 and Cros.Obj.No.84 of 2000.

2.In the grounds raised in the Review Application, it had been stated that the Counsel, who appeared for the Review Applicant, had not brought to the notice of this Court the Local Establishment Executive Authority provision of the Tamil Nadu District Municipalities Act, 1920. It had been stated that under Section 146 of said Local Establishment Executive Authority, an existing private toilet is provided for the owner of the building as an amenity in a suitable place in that particular building as stated by the Survey Officer of the Local Establishment Executive Authority.



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3.It had also been stated that a suit had been instituted for declaration of title with specific survey field measurement clubbing four necessary boundaries. It had also been stated that 'B' schedule is bounded by walls on the north, south and west side and had entrance on the east.

4.The learned Counsel for the review petitioner stated during the arguments that necessary stamp duty had not been paid for the property in 'B' schedule. It was also stated that the disputed toilet situated at T.S.No.545, is permissible under Section 146 of the Tamil Nadu District Municipalities Act, 1920. It had also been stated that the Court had not correctly compared the plan filed along with plaint marked as Ex-A1 and the plan filed by the Commissioner marked as Ex-C2. It had been further stated that it is clear that the house of the plaintiff in T.S.No.545 by Ex-A8 is as given in the sketch in T.S.No.544 and therefore, they cannot claim any further portion or further land.

5.It had also been stated that according to Ex-A2, the house of the plaintiff is mud wall with thatched roof. It had also been stated that Ex-



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B1 and Ex-B2, preliminary and final decrees passed in partition suits in O.S.Nos.17 and 18 of 1943 on the file of the Subordinate Court, Ramanathapuram at Madura and a declaration had been given that the predecessors Shanmugam Sundaram Chettiar has title to the property. It had also been stated that there is a rain water outlet pipe in the wall of the first defendant facing towards the 'B' schedule property. It had been finally stated that the judgment in the Second Appeal and in the Cross Objection should be reviewed.

6.Heard M.Arumugam, the learned Counsel for the review petitioner and Mr.P.Athimoolapandian learned Counsel for the third respondent.

7.In so far as the contention of the learned Counsel for the petitioner that the Counsel had not properly putforth the case is concerned, this would not be a ground to review the judgment. To review the judgment, the provision under Section 114 CPC and under Order 47 Rules 1 and 2 CPC alone will have to be considered. The said provisions are as follows:



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(a)Section 114 of CPC reads as follows:

*“114.**Review.** Subject as aforesaid, any person considering himself aggrieved— (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been referred.*

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.”

(b)Order XLVII Rule I and 2 CPC reads as follows:

“Application for review of judgment

(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.”



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8. Unless the petitioner produces additional documents, it would not be possible to review the judgment. It stated and must be established that there is an error apparent on the facts of the case. If the Court during the review application, has to exercise and apply its mind on the grounds taken afresh, then an alone appeal will lie.

9. All the grounds stated above can very well be taken by the review applicant in an appeal proceeding, but they certainly cannot be examined in a review proceeding.

10. In ***(1997) 8 SCC 715 [Parsion Devi and Others Vs. Sumitri***

Devi and Others], the Hon'ble Supreme Court 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 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. Considered in the light of this settled position we find that Sharma, J. clearly over-stepped the jurisdiction vested in the court under Order 47 Rule 1 CPC. The observation of Sharma, J. that "accordingly", the order in question is reviewed and it is held that the decree in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory



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injunction were provided" and as such the case was covered by Article the scope of Order 47 Rule 1 CPC. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the later only can be corrected by exercise of the review jurisdiction. While passing the impugned order, Sharma, J. found the order in Civil Revision dated 25.4.1989 as an erroneous decision, though without saying so in so many words. Indeed, while passing the impugned order Sharma, J. did record that there was a mistake or an error apparent on the face of the record which not of such a nature, "Which had to be detected by a long drawn process of reasons" and proceeded to set at naught the order of Gupta, J. However, mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in exercise of the review jurisdiction. Recourse to review petition in the facts and circumstances of the case was not permissible. The aggrieved judgment debtors could have approached the higher forum through appropriate proceedings, to assail the order of Gupta, J. and get it set aside but it was not open to them to seek a "review of the order of petition. In this view of the matter, we are of the opinion that the impugned order of Sharma, J. cannot be sustained and accordingly accept this appeal and set aside the impugned order dated 6.3.1997."

11.In (2008) 11 SCC 107 / T.Thimmaiah (dead) by Lrs. Vs.

Venkatachala Raju (dead) Lrs.], the Hon'ble Supreme Court has held as follows:-

"2. During the course of hearing, the learned counsel for the appellant has pointed out that a bare perusal of the order in review would reveal that it is based on a complete reappreciation of the matter on facts and the provisions of Order 47 Rule 1 of the Code of Civil Procedure which would govern an application for review, have been completely ignored. It has been submitted by the counsel that the Single Judge had, in the first Judgment, examined the facts and dismissed the appeal and on a reconsideration of the same facts, had allowed the same, which was not justified. We find merit in this plea. From a bare perusal of the Judgment in review, it is clear that the principles laid down under Order 47 Rule 1 CPC have been completely ignored. We accordingly allow the appeal, set aside the



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order in review dated 26.2.2001 and dismiss the appeal in the suit. We, however, give liberty to the respondent herein to challenge the Judgment dated 16.2.1999, if so advised.”

12. In **(2018) 4 SCC 587 [Sivakami and Others Vs. State of Tamil**

Nadu and Others], the Hon'ble Supreme Court has held as follows:-

“18. 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.

19. A fortiori, what was not decided in appeal by the Division Bench could not be decided by the Division Bench while deciding the review application. It is for this reason, we are also constrained to set aside the review order.”

9. The learned Counsel for the petitioner has not been able to produce any document to hold that there is an error apparent on the face of records.

10. The learned Counsel for the third respondent placed reliance on the judgment of the Supreme Court reported in **1997 9 SCC 736 [Tamil Nadu Electricity Board and another vs M.Raju Chettiar and another]**,



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wherein, the Honourable Supreme Court come down very heavily on another Advocate filing a review application without providing any reason as to why the Advocate who appeared during the hearing of the Second Appeal had not filed the review application. It had been observed as follows:

“..... When an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the advocate on record who neither appeared nor was party in the main case. It is salutary to not that court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the advocate on record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession.....”

11.The dictum laid above would apply to the facts of this case.

12.The Review Application stands dismissed. No costs.

Index :Yes / No
Internet :Yes
NCC : Yes/No
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C.V.KARTHIKEYAN, J.

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