



Rev.Aplc(MD) No.73 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

Review Application (MD) No.73 of 2014

and

M.P.(MD) Nos.1 and 2 of 2014

in

S.A.(MD) No.136 of 2010

Ganesan

... Review Applicant/Respondent

Vs

Thangamani

... Respondent/Appellant

Prayer: Review Application filed under Order 47 Rule 1 read with Section 114 of Code of Civil Procedure to review the judgment and decree dated 23.01.2014 made in S.A.(MD) No.136 of 2010 on the file of this Court.

For Applicant : Ms.J.Anandhavalli

For Respondent : Mr.K.Balasundharam
Senior Counsel
for Mr.R.Paranjothi



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ORDER

Aggrieved by the judgment and decree passed by this Court allowing the second appeal, the respondent in the second appeal has filed this review application.

2. The respondent in the review application filed a suit for declaration and injunction in respect of two items of the property. The respondent claimed right over suit Item-1 under a settlement executed by his mother Silambayee marked as Ex.A.1. He also claimed right over Item-2 under a Will executed by his mother Silambayee, which was marked as Ex.A.5.

3. The trial Court upheld the Will as well as the settlement relied on by the respondent and granted a decree for declaration of title and injunction as prayed for. Aggrieved by the same, the applicant herein filed a first appeal and the first appellate Court set aside the judgment and decree passed by the trial Court mainly on the ground that the title of the mother of



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the respondent Silambayee was not proved. Further, the first appellate Court held that though the applicant herein attested Ex.A.1 settlement deed, there was no evidence available on record to show that attestation was done with the knowledge of contents.

4. Challenging the judgment and decree passed by the first appellate Court, the respondent herein filed a second appeal in S.A.(MD) No.136 of 2010 and the same was allowed by this Court. The applicant herein, aggrieved by allowing of the second appeal, has come up with this review application on the ground that the judgment and decree passed by this Court is vitiated by error apparent on the face of record.

5. The learned counsel for the review applicant mainly contended that when title of Silambayee was disputed by the applicant herein in the written statement, as a plaintiff in a suit for declaration, it is incumbent on the respondent to prove that Silambayee had title over the suit property. In other words, it is the submission of the learned counsel for the applicant that



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even in case where the settlement and Will relied on by the respondent are upheld as valid documents, unless the title of Silambayee is proved to the satisfaction of the Court, she cannot convey any title to the respondent under Ex.A.1-settlement and Ex.A.5-Will.

6. The question relating to the title of Silambayee was considered by this Court in the judgment sought to be reviewed by the applicant. This Court in its judgment held that the applicant herein as D.W.1 admitted that his mother Silambayee executed Power Deed in his favour in the year 1973. This Court after referring to the said admission, held that admission is the best evidence and therefore, having acted as Power Agent of Silambayee by accepting her title, it was not open to the applicant to turn around and deny her title. Therefore, the applicant is not entitled to raise the very same point in a review application which had been dealt with by this Court while disposing of the second appeal.



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7. The learned counsel for the applicant further submitted that knowledge of contents of a document cannot be imputed to the attestor to the said document and hence, merely because the applicant signed as a witness in Ex.A.1 settlement deed, the same would not estop the applicant from denying the title of the respondent.

8. The said contention was also considered by this Court in the judgment sought to be reviewed. This Court after referring to various factors like relationship between the parties, Power of Attorney executed by the mother in favour of the applicant and diary entries of the applicant which were marked as Ex.A.27 to Ex.A.30, came to the conclusion that the applicant attested the document with knowledge of contents of the same. While exercising review jurisdiction, this Court is not entitled to re-appreciate the evidence available on record and come to a different conclusion. I do not find any error apparent on the face of the record in the judgment sought to be reviewed. The scope of review jurisdiction is very limited and hence, I am not inclined to entertain this review application.



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9. Along with this application for review, the applicant also filed M.P.(MD) No.1 of 2014 for reception of additional evidence. The applicant wants to produce plaint and written statement in O.S.No.719 of 1985 on the file of the District Munsif's Court, Trichy and decree in A.S.No.144 of 1998 on the file of Sub Court, Trichy as additional evidences in this review application. The applicant was a party to the suit in O.S.No.719 of 1985 and A.S.No.144 of 1998. Therefore, the additional evidences sought to be produced now were within the knowledge of the applicant even at the time when the second appeal was disposed of. Had he exercised due diligence, he could have produced those documents before the trial Court or before the appellate Court or at least before this Court in the second appeal. Therefore, in the absence of any acceptable reason for his failure to produce those documents before the Courts below and also before this Court at the time disposal of the second appeal, I am not inclined to entertain the petition filed by the applicant to raise additional evidences in this review application.



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10. In view of the discussions made earlier, the review application and the petition to raise additional evidence in M.P.(MD) No.1 of 2011 are dismissed. M.P.(MD) No.2 of 2011 to suspend the decree is closed. No costs.

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NCC: Yes/No

Index: Yes/No

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S.SOUNTHAR, J.

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