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C.R.P(MD)No.1060 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 25.04.2023

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P.(MD)No.1060 of 2015

M.Markkandeyan

... Petitioner

Vs

1.M.Srinivasan

2.M.Kodeeswara Ramanathan

3.N.Chandraleka

4.L.Gangamirtham

A.C.M.Ponnammal (Died)

(LRs of the fifth plaintiff
are already on record)

5.M.Ganeshwara Boopathy

6.M.Gnanavel

... Respondents

PRAYER :-

This Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for all records of the order passed on 14.07.2004 in the I.A.No.251 of 2001 in the O.S.No.128 of 2000 on the file of the Subordinate Judge, Virudhunagar and review order dated 20.04.2015 made in I.A.No.202/2005 on the file of the Subordinate Judge and quash the same and



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preent the impersonator to amend as 3rd defendant and allow this Civil
Revision Petition.

For Appellant : Mr.Markkandeyan
(Party-in-person)

For Respondents : No appearance

ORDER

This Civil Revision Petition is filed by the first plaintiff in O.S.No.128 of 2000 on the file of the Subordinate Court, Virudhunagar, as against the order passed in I.A.No.251 of 2001 dated 14.07.2004 and review order dated 20.04.2015 made in I.A.No.202 of 2005.

2. I.A.No.251 of 2001 was filed by a third party one Seenivasan, claiming to be the foster son of Chinna Mallaiah Naicker. O.S.No.128 of 2000 is a suit for partition. I.A.No.251 of 2001 was filed by a third party as the petitioner to implead himself in the partition suit in O.S.No.128 of 2000. A counter was filed by the third respondent / third plaintiff. After hearing both the parties, the trial Court allowed the impleading petition filed by the third party petitioner M.Seenivasan, on 14.07.2004. Thereafter, necessary



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amendments were carried out in the plaint. Specifically, neither any C.M.A., nor revision is preferred as against the said order passed by the learned Sub Judge, Virudhunagar in I.A.No.251 of 2001. Thereafter, in the year 2005, I.A.No.202 of 2005 was filed by the petitioner / respondents / plaintiffs seeking to review the order passed by the trial court in I.A.No.251 of 2001 dated 14.07.2004. The said petition was filed on 21.10.2005. Respondents 1 and 3 in the said I.A., have filed a counter. The trial Court in its order dated 20.04.2015, has stated no witnesses were examined and documents were also not marked on both sides in the said I.A. The trial Court has held as follows:

"7.The Petitioners had come forward with this Review Petition stating that this Court under the impression that the Plaintiffs in their Plaint had stated the 3rd Respondent as the elder son of Chinna Mallaiya Naicker has ordered to implead the 3rd Respondent as the 3rd Defendant in the suit and that the Plaintiffs have not stated so in their Plaint and that the orders in I.A.No. 251/2001 has to be corrected by way of Review by inserting the words as "The Respondents 1 to 5 have stated in their Plaint that the Petitioner was like an elder son of Chinna Mallaiya Naicker". The Respondents had contended that the Petitioners cannot seek review to insert a sentence in the orders and that only typographical error and error apparent on the face of the record can be corrected through Review.



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8.Both parties relied on the decision of our Honourable Supreme Court reported in 2014 AIR (Civil) 87 N.Anantha Reddy Versus Anshu Kathuria & Ors. "Review jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the order / judgment does not call for review - Mistake apparent on the face of record means that the mistake is self evident, needs no search and stares at its face - Surely, review jurisdiction is not an appeal in disguise - Review does not permit rehearing of the matter on merits - Where the High Court had a fresh look at the question which had been decided by it by order sought to be reviewed and in the light of such fresh look it recalled its earlier order under review - High court exceeded its review jurisdiction - Such Course followed by High Court was clearly flawed."

9. The Petitioners had filed the suit for partition impleading the Respondents 1 and 2 as Defendants. The 3rd Respondent has filed impleadng Petition in I.A.No.251/2001 to implead him as 3rd Defendant in the suit and the same has been allowed by this Court on 14.07.2004. Among several reasons stated by this Court for allowing the said petition one of the reasons is that the Plaintiffs had stated in their plaint that the 3rd Respondent is also the son of Chinna Mallaiya Naicker. The Petitioners had stated that they had mentioned the 3rd Respondent herein as like an elder son and so the orders have to be reviewed by inserting "The Respondents 1 to 5 have stated in their Plaint that the Petitioner was like an elder son



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of Chinna Mallaiya Naicker". As stated earlier several reasons are stated by this Court for allowing the Impleading Petition and the plaint averment describing the 3rd Respondent is only one among the reasons. If the Petitioners are aggrieved by the orders of this Court in allowing the Impleading Petition, they ought to have filed an appeal or revision. Here the Petitioners had stated that under wrong impression this Court has allowed the Impleading Petition and the same has to be corrected by review. Applying the above decision of our Honourable Supreme Court, only error apparent on the face of the record can be corrected by way of review and so seeking to insert a sentence in the orders will not come under review jurisdiction. Hence the petitioners are not entitled for review as claimed in this Petition. "

3. Assailing the said order, the revision petitioner / respondent / plaintiff is before this Court on various grounds. The revision petitioner as party-in-person vehemently raised the primordial point that the impleaded third party namely Seenivasan was not actually his brother at all and he has impleaded himself by impersonating himself as his foster brother Srinivasan and the Party-in-person vehemently argued that the trial Court when considering the identification of the third party or by verifying on the face of the School Certificate, SSLC book 2573F and the Government Service



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Register passed this order, without giving an opportunity for him to mark those documents by depositing evidence before the trial Court. But such an exercise cannot be done in a revision petition when there is no scope for any Court to mark official document through persons who are unrelated to the said documents.

4. Moreover, the learned trial Court has specifically mentioned that in the name of filing a revision petition, the petitioner has actually sought for inserting a new sentence in the order which is not permissible. No doubt the learned trial Court has rightfully dismissed the review petition since it is only an error apparent on the face of record which could be corrected by way of review and seeking to insert a sentence in the order will not come in the review jurisdiction and moreover, the party-in-person also failed to explain the laches to prefer this Civil Revision Petition as against the order passed in I.A.No.251 of 2001 and also he failed to substantiate any acceptable reason for not preferring any CMA or review as against the order. Hence this Court is of the considered view that the trial Court has rightly allowed the I.A.No. 251 of 2001 and rightly dismissed I.A.No.202 of 2005. Having not objected to the impleadment of the third respondent as one of the defendant in the main



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suit, now in the revision petition the party in person / revision petitioner cannot agitate the same.

5. Hence I am of the view that the order passed by the learned Subordinate Judge, Virudhunagar in both I.A.Nos.251 of 2001 and 202 of 2005 are in order. However, considering the nature of the suit that it is a partition suit and considering the plight of the revision petitioner that he was not allowed to mark certificates to substantiate his case, the trial Court is directed to give sufficient opportunity to the revision petitioner to mark necessary documents submitted by him before the trial Court at the time of trial, especially, the school certificate, SSLC Book and Government Service Records pertaining to the impleaded third party Seenivasan. With the above observation, this Court is inclined to uphold the order passed by the trial Court and this Civil Revision Petition is dismissed. No costs.

25.04.2023

Index : Yes / No
Internet : Yes / No
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L.VICTORIA GOWRI, J.

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To

- 1.The Sub-ordinate Judge, Virudhunagar.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

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