



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

JUDGMENT RESERVED ON : 27.02.2023

JUDGMENT PRONOUNDED ON : 01.06.2023

CORAM

THE HON'BLE MR. JUSTICE R.VIJAYAKUMAR

REV.APLC(MD)No.6 of 2023

in

SA(MD).No.725 of 2009

1.S.Arunachalam(died)

2.A.Ragini

3.M.Jaya

4.A.Geetha

5.A.Nagarajan

6.A.Suyambukani

7.A.Jothy

8.A.Manju

....Review Petitioners/Appellants

Vs

C.Santhakumar

...Respondent/Respondent

Prayer:- Review Application filed under Order XLVII Rule 1 of CPC r/w.

Section 114 of CPC, to review the judgement dated 10.08.2022 made in



S.A.No.725 of 2009 on the file of this Hon'ble Court Judgement confirming the judgement and decree dated 06.04.2009 made in A.S.No.83 of 2008 on the file of the II Additional Subordinate Court, Nagercoil reversing the judgement and decree dated 28.04.2008 made in O.S.No.565 of 2006 on the file of the Principal District Munsif, Nagercoil.

For Appellants : Mr.M.Arjunvarman
For Mr.S.Rajasekar

For Respondent : Mr.C.Godwin

JUDGMENT

The review petition has been filed seeking to review the judgement and decree of this Court dated 10.08.2022 made in S.A(MD).No.725 of 2009.

2.The respondent in the said appeal had filed O.S.No.565 of 2006 before the Principal District Munsif Court, Nagercoil for declaration of title, recovery of possession and permanent injunction not to alter the physical features of the property. The said suit was dismissed by the trial Court.

3.On appeal, the First Appellate Court was pleased to allow the appeal and decreed the suit. As against the same, the second appeal was



filed by the defendant which was dismissed by this Court on 10.08.2022.

WEB COPY

4.The plaintiff had claimed title on the basis of Exhibit A1-registered sale deed dated 17.11.1989 which stands in the name of his father. The plaintiff had also relied upon Exhibit A1 Will under which the plaintiff's father had bequeathed the suit schedule property in favour of the plaintiff. Both these documents have not been specifically disputed in the written statement. The only contention of the defendant is that he is in possession of the property right from the days of his father and hence, he has acquired title by adverse possession.

5.In paragraph No.14, this Court has found that the defendant having not admitted the title of the plaintiff, the question of seeking adverse possession as against the plaintiff would not arise. This Court has considered two property tax receipts filed on the side of the defendant namely Exhibits B1 and B2 and came to a finding that they are of the year 1995 and the suit having filed in the year 2006, even the said plea of adverse possession has not been proved.

6.The learned counsel for the petitioner had contended that Exhibits B1 and B2 referred to the payment of property tax for the period from 01.04.1994 to 31.03.1995 and therefore, the said document should not have been considered to be the document of the year 1995. However, I am not in



agreement with the said submissions, in view of the fact that the document is dated 31.03.1995. That apart, when the defendant has not admitted the title of the plaintiff, the question of seeking adverse possession as against the plaintiff would not arise either by referring to Exhibit B1 or B2.

7.The learned counsel for the review petitioner had relied upon the judgment of the Hon'ble Supreme Court reported in **(2006) 7 SCC 570 (T.Anjanappa and others Vs. Somalingappa and another)** to contend that only when the title is expressly and impliedly denied, the question of adverse possession would arise. The learned counsel had further relied upon another judgement of the Hon'ble Supreme Court reported in **(2014) 2 SCC 269 (Union of India and others Vs. Vasavi Co-operative Housing Society Limited and others)** to contend that in a suit for declaration, the burden is always lies upon the plaintiff and the decree cannot be granted for declaration based upon the weakness of the defendant.

8.The above said submissions raised on the side of the review petitioner does not fall within the purview of the error apparent on the face of the record. The review petitioner is attempting to re-argue the second appeal under the guise of review petition. Unless an error apparent is pointed out which would result in changing the final out come of the appeal, this Court will not be a position to invoke Order 47 Rule 1 C.P.C.



9. In the present case, no error apparent has been pointed out which is likely to alter the final outcome of the second appeal. Therefore, the submissions made on the side of the review petitioner lack merits and the review application stands dismissed. No costs.

01.06.2023

Index: Yes/No
Internet: Yes/No
NCC : Yes/No
msa



WEB COPY



6

R.VIJAYAKUMAR, J.

msa

Pre-Delivery Judgment made in
REV.APLC(MD)No.6 of 2023
in
SA(MD).No.725 of 2009

01.06.2023