



Rev.aplc(MD).No.66 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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JUDGMENT RESERVED ON : 11.09.2023

JUDGMENT PRONOUNDED ON : 05.10.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

REV.APLC(MD)No.66 of 2023

in

CRP(MD).No.618 of 2004

1.Kabira

2.Mohammad Meera Moideen

3.Rahima Bi (died)

....Petitioners

Vs

1.A.Noorjahan

2.A.Tajudeen

3.A.Jiyaudeen

4.Jaithoon Bibi

5.Mallika Bibi

6.Kamaluddin

7.Rahima Bibi

8.Fathima Bibi

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9.Kathija Bibi

10.Sirajudeen

11.Anu Fousia Banu

...Respondents

(Cause title is accepted vide Court order dated 27.02.2020)

(Respondents 4 to 11 have not contested the CRP
and they are not necessary parties for this review petition)

Prayer:- Review Application filed under Section 114 and Order XL VII
Rule 1 of C.P.C, to review the order in C.R.P(MD).No.618 of 2004 dated
03.10.2012 passed by this Court and dismiss CRP(MD).No.618 of 2004.

For Appellants : Mr.S.Natarajan
Senior Counsel
For Mrs.Vijayakumari Natarajan

For R1 to R3 : Mr.M.Ashokkumar

JUDGMENT

The respondents 1 to 3 in CRP(MD).No.618 of 2004 have filed the
above review application seeking to review the order dated 03.10.2012.

2.The ancestor of the review applicant herein had filed O.S.No.630 of
1975 for the relief of partition, separate possession and to direct the
defendants 1 to 3 to render an account from the date of filing of the suit till



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the date of possession to the plaintiff.

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3.A preliminary decree was passed on 07.02.1978. The decree holder had filed I.A.No.202 of 1978 for passing of the final decree with a prayer to divide the properties by metes and bounds and to take account of the income from 'B' schedule property and 'C' schedule property. A final decree was passed on 13.01.1992 by dividing the properties by metes and bounds and allotting a specific property in favour of the decree holder/plaintiff. However, in the final decree proceedings, there is no direction to take account of the income of 'B' schedule or 'C' schedule property.

4.The decree holder had filed I.A.No.546 of 1998 in I.A.No.202 of 1978 to pass a decree for mesne profits by way of accounting payable by the defendants on the basis of the report filed by the Advocate Commissioner or appoint a fresh Advocate Commissioner to determine the mesne profits.

5.The said application was resisted by the defendants on the ground that the relief of accounting and mesne profits were negated in the final decree proceedings and it has reached finality. They have further contended that the relief of accounting cannot be equated with the mesne profit.They further contended that the final decree proceedings got terminated long ago



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and the present application has been filed belatedly. However, the trial Court proceeded to allow the said application by appointing a fresh Commissioner to determine the mesne profit. This order was challenged by the defendants in CRP(MD).No.618 of 2004.

6.This Court by an order dated 03.10.2012, after considering the submissions made on either side, relied upon a Division Bench judgment of our High Court reported in 1999-2-L.W.136 (*Gnanaprakasa Mudaliar and two others Vs. Anandathandavan*) and arrived at a finding unless the final decree provides for future mesne profits, the same cannot be prayed after passing of the final decree.

7.The learned Judge has also arrived at a finding that the final decree having been passed on 13.01.1992, the present application seeking mesne profit has been filed on 01.07.1998 is barred by limitation. On the basis of the said findings, the revision petition filed by the defendants was allowed. Seeking to review the said order, the decree holders have filed the present review application.

8.The learned Senior Counsel appearing for the review applicants relied upon the judgment reported in *AIR 1963 Mad 171 (Ponnuswami Udayar and another Vs. Santhappa Udayar and others)* to contend that



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even if there is an incidental omission of a specific prayer with regard to the future mesne profits in the plaint, the same can be ordered. The learned Senior Counsel further relied upon a judgment of our High Court reported in *AIR (1975) 1 MLJ 53 (A.R.Veerappa Gounder Vs Sengoda Gounder)* to contend that the nothing in the Civil Procedure Code prohibits the passing of more than one final executable decree in a suit. Therefore, according to him, even after passing of the final decree, another final decree for mesne profits could be passed by the Court.

9.The learned Senior Counsel had further relied upon a judgment of our High Court reported in *1988(2) MLJ 18 (P.Poonammal and others Vs. Mrs.Kanakavalli Srinivasan)* to impress upon the Court that even after passing of the preliminary decree, it is open to the Court to issue appropriate direction relating to mesne profits either suomotu or on application of the parties. He had further pointed out that there is no question of limitation as the proceedings have been pending and the income has to be ascertained with reference to the period commencing from the date of suit. Therefore, according to the learned Senior Counsel, the order of this Court should be reviewed on the ground that there is a clear error of law.



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10.The learned Senior Counsel had further contended that the Revision Court had erroneously relied upon three years limitation mentioned in Order 20 Rule 12 which is applicable only for the period for which the mesne profit should be claimed and not with regard to the time limit within which such an application has to be filed. He had further pointed out that the Advocate Commissioner appointed for the final decree proceedings has already calculated the mesne profit and by mistake, the final decree Court has not incorporated the said aspect in the final decree. For the mistake of the Court, the decree holder should not be put to prejudice.

11.Per contra, the learned counsel for the respondents had contended that though in the final decree application, the plaintiff/decreed holder has prayed for accounting, the same has not been ordered by the final decree Court. Therefore, it should only be construed to have been negatived. When the said final decree has not been challenged by the decree holder, the present application filed, six years after passing of final decree is not maintainable. He had further contended that the entire arguments advanced on the side of the review applicant, does not fall within the purview of the ground of review as contemplated under Order 47 Rule 1 of C.P.C.



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12.I have given anxious consideration to the submissions made on either side and perused the material records.

13.The revision Court has chosen to allow the revision petition filed by the defendants on the following three legal grounds:

(a)The final decree does not provide for accounting and the said decree has reached finality.

(b)After passing of final decree, no interim application could be filed seeking mesne profits.

(c)The application seeking mesne profits having been filed six years after passing of final decree beyond the period of limitation.

14.The learned Senior Counsel had addressed his submissions attacking all the three grounds relying upon various decisions of our High Court. Therefore, it is clear that the submissions made on the part of the review applicants are nothing but an attempt to reargue the revision petition.

15.The Hon'ble Supreme Court in a judgement reported in (1997) 8 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."

16. 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 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.”



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17.A careful perusal of the judgments of the Hon'ble Supreme Court cited supra, will clearly indicate that even if the judgment is an erroneous decision, the jurisdiction under Order 47 Rule 1 of C.P.C cannot be invoked. It could be further seen that the old arguments which were already advanced and negated by the Court cannot be raised again to rehear the concluded decision.

18.In view of limited scope available to the Court, in the exercise of powers under Order 47 Rule 1 of C.P.C, this Court is not inclined to entertain the review application. All the submissions raised on the side of the review applicants are on merits of the orders passed by the learned Single Judge and they cannot be construed to be an error apparent on the face of the record. There are no merits in the Review Application and the same stands dismissed. No costs.

05.10.2023

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

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Pre-Delivery Judgment made in
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