



Review Application No.227 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.09.2024

Pronounced on : 19.10.2024

CORAM : JUSTICE N.SESHASAYEE

Review Application No.227 of 2023

K.Suguna

.. Review Petitioner / 2nd Respondent

Vs

1.Malleeswari

2.Aruna

.. Respondents / Petitioner, 1st Respondent

Prayer : Review Application filed under Order 47 Rule 1 CPC., read with Section 114 CPC, praying to review the order dated 23.09.2022 made in C.R.P (NPD) No.1439 of 2019.

For Review Petitioner : Mr.M.S.Subramaniam
for Mr.V.S.Siva Sundaram

For Respondents : Mr.R.Ravi for R1
Mr.R.Krishnaswamy for R2

ORDER

The third defendant in O.S.No.192 of 2000 on the file of District Munsif Court, Ponneri / the second respondent in CRP.(NPD) No.1439 of 2019 has



filed the present petition to review the order of this Court dated 23.09.2022

in the above referred revision petition.

2. The facts are :

- a) A certain Munusamy Naidu obtained 11 items of property vide partition deed dated 22.11.1999.
- b) Munusamy Naidu had a son named Subramani and a daughter named Malleeswari.
- c) While so, Subramani instituted O.S.No.192 of 2000 against his father Munusamy Naidu and obtained an exparte preliminary decree for half share in 11 items of suit property.
- d) After passing of the preliminary decree, Munusamy sold Items 4 to 7 of the suit property in favour of Suguna, the review petitioner. While in terms of preliminary decree dated 25.02.2003, Munusamy Naidu was entitled to only half share in these items of property, but the sale deed in favour of the review petitioner dealt with the entire property. Out of the remaining properties, Munusamy executed a Will as regards all the suit properties in favour of his daughter Malleeswari, except Item No.11.



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Review Application No.227 of 2023

- e) In the meantime, Subramani/plaintiff had died and his widow Aruna came to be impleaded, and she filed I.A.No.140 of 2006 for passing a final decree.
- f) The present review petitioner who had purchased items 4 to 7 from Munusamy Naidu took out two applications viz., I.A.No.130 of 2013 for re-opening I.A.No.140 of 2006, in which orders had been reserved by the trial Court and I.A.No.135 of 2013 for impleading her as a party respondent in I.A.No.140 of 2013. They came to be dismissed vide separate orders, both dated 16.07.2013.
- g) In the meantime, Malleeswari, the legatee under the Will of Munusamy Naidu, filed an application in I.A.No.1199 of 2018 in I.A.No.140/2006 for modification of the preliminary decree on the ground that she is entitled to equal share in the ancestral property, in the hands of her father, Munusamy. That petition came to be dismissed on 08.03.2019, and it became the subject matter in CRP(NPD) No.1439 of 2019.

3. Vide order dated 23.09.2022 in the aforesaid CRP, while dealing with the right of the review petitioner, this Court has held as below :



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Review Application No.227 of 2023

“6. Secondly, her contention that the sale agreements that she had entered into with Munusamy Naidu were dated prior to the cut off date is also immaterial since the sale agreements do not create any interest over the land, but creates only contractual obligation on Munusay Naidu. In effect Suguna could hold on to only $\frac{1}{2}$ share that Munusamy Naidu had in terms of the preliminary decree. Now, she pleads certain facts to dispute that the suit properties are not coparcenery properties for Malleswari to stake a claim in terms of the law declared in **Vineeta Sharma case** cannot be countenanced by this Court, for it is not available for a pendente lite transferee to canvass, She has to merely settle for what her vendor obtains under the decree.”

4.1 The review petitioner now contends that if Malleeswari were to be given her $\frac{1}{3}$ rd share, then even the half share which the review petitioner might become entitled to will further reduce. It might be that the review petitioner was a *pendente lite* purchaser from Munusamy Naidu, but it is not any illegality that she had committed. Indeed, there is a warranty of title in her favour under Section 55 of Transfer of Property Act, which her vendor was under a duty to protect but unfortunately her vendor Munusamy Naidu passed away and therefore, she is forced to defend her title. While defending her title to the properties that she had purchased, the review



petitioner is entitled to all the defences available to her under the law. In that sense, she also has the right to contend that the suit properties are not ancestral properties, in order, Malleeswari could be granted her right. And she still has an opportunity to retain all the properties that she had purchased by adjusting the equities as between the properties she had purchased. Indeed, at the time when she purchased the property, Malleeswari's claim was not before the Court. Reliance was placed on the ratio in ***Rajendran Vs. Mohanambal*** [2018 (6) CTC 483; 2018(8) MLJ 649 : 2018 (5) L.W. 791]. The learned counsel for the review petitioner has also placed reliance on the ratio in ***Amit Kumar Shaw and another Vs Farida Khatoon and another*** [(2005) 11 SCC 403]; ***Thomson Press (India) Limited Vs. Nanak Builders and Investors Private Limited and others*** [(2013) 5 SCC 397] and ***Mudlapur Murari Rao and others Vs. Balavanth Dikshit and another*** [1924 AIR (Mad) (0) 98].

4.2 This Court however, in its order passed in CRP.(NDP) No.1439 of 2019, has literally forfeited the right of the review petitioner to defend her title to the property based on such defences as are available to her, and has virtually foreclosed her right to defend. This goes against the ratio in ***Rajendran Vs. Mohanambal*** [2018 (6) CTC 483; 2018 (8) MLJ 649 : 2018 (5) L.W. 791]



and hence, the order of this Court dated 23.09.2022 in CRP.(NDP) No.1439 of 2019, is required to be reviewed.

5. Per contra, the counsel for Malleeswari, the revision petitioner submits that the review petitioner's effort to implead herself in the final decree application and also her right to reopen the preliminary decree ended in futile, as they were dismissed by the trial Court. She did not chose to challenge the said dismissal orders and that they have become final. And that she has already lost, cannot be revived through the review petition. Reliance was placed on the ratio in *Marirudraiah and others Vs B.Sarojamma and others* [(2009) 12 SCC 710].

6.1 Rival contentions are carefully assessed. In *Rajendran Vs Mohanambal case*, I had an occasion to hold that even in the case of *pendente lite* transfer, the title to the property transferred vests in the transferee absolutely, and that Section 53A of Transfer of Property Act, only subjects such transfer to the outcome of the suit. After all, *pendente lite* transfer is not an illegality but the title vested in the *pendente lite* transferee is made contingent upon the outcome of the suit. To start with, when the



review petitioner purchased items 4 to 7, she atleast had half share in that.

And, on the date of the sale, this right is vested in her absolutely. After all, under the preliminary decree passed, Munusamy Naidu had half share in the property, but for Malleeswari making a claim for 1/3rd share in all the suit properties, based on Act 39 of 2005, she would have secured atleast half share in the properties that she had purchased. And, she had all the opportunities to adjust the equities vis-a-vis the half share her vendor Munusamy Naidu had in the remaining items of suit properties to enable her to hold on to the entire properties that she had purchased.

6.2 In this scenario, when Malleeswari throws her hat claiming 1/3rd share in all items of suit properties, then it throws a challenge to the review petitioner to protect even the minimum interest in the properties that she had purchased. And if the properties are not ancestral properties, then Malleeswari surely will not have any right. It has to be underscored here, the properties are treated as ancestral properties merely because the plaintiff in his suit had asserted it. But, Munusamy Naidu, the defendant did not file any written statement. This possibly may bind Suguna as against the heirs of the plaintiff but not as against Malleeswari.



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7. This Court considers that there is an error apparent on the face of the record vis-a-vis the order passed in CRP.(NDP) No.1439 of 2019, in forfeiting to the review petitioner her right to defend the claim of Malleeswari, since Malleswari's claim of 1/3rd share is a third party claim vis-a-vis the structure of the suit.

8. In conclusion, this Court deems it appropriate to set aside the order passed in CRP.(NDP) No.1439 of 2019, and remands I.A.No.1199 of 2018 in I.A.No.140 of 2006 in O.S.No.192 of 2000 back to the trial Court for fresh enquiry in which the review petitioner will have all the opportunities to putforth her contention in aid of her defence in protecting her right over the properties that she had purchased. The review petition is allowed accordingly. No costs.

19.10.2024

Index : Yes / No

Neutral Citation : Yes / No

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Review Application No.227 of 2023

N.SESHASAYEE.J.,

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Pre-delivery order in
Review Application No.227 of 2023

19.10.2024