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Rev.Appl.No.48 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.01.2024

CORAM :

THE HONOURABLE MS.JUSTICE P.T.ASHA

Rev.A.No.48 of 2023

in

S.A.No.760 of 2022

P.Alamelu

...Applicant

Vs.

1. Somaskandan

2. Shanmugavel

...Respondents

PRAYER: Review Application filed under order XLVII Rule 1 r/w Section 114 of the Civil Procedure Code against the order passed in S.A.No.760 of 2022 dated 15.09.2022.

For Applicant : Mr.P.Vijendran

For Respondents : No appearance

ORDER

The applicant seeks to review the judgment passed by this Court on 15.09.2022 in S.A.No.760 of 2022. The only ground on which the applicant seeks to review the above second appeal judgment is that the ground of the Limitation Act is not applicable



Rev.Appl.No.48 of 2023

to the Specific Relief Act and that the dismissal of the second appeal on the ground that the plaintiff had approached the Court 15 years after the oral partition and therefore, the suit is barred by limitation, is erroneous.

2. It is, therefore, necessary to briefly touch upon the facts of the case.

FACTS OF THE CASE:

2.1. The plaintiff, who is the appellant and the review applicant herein, had filed a suit for specific performance contending that she had entered into an oral agreement in respect of the suit schedule property and that sale consideration fixed was a sum of Rs.60,000/- (Rupees Sixty Thousand only). The said sum was paid and possession was handed over to the plaintiff. The plaintiff would plead that 15 years prior to the institution of the suit, she had entered into an oral agreement with the first defendant to purchase the suit property for a total sale consideration of sum of

<https://www.mhc.tn.gov.in/judis> Rs.60,000/- (Rupees Sixty Thousand only) and that on the said



Rev.Appl.No.48 of 2023

date, the entire amount was paid and she has been put in possession of the suit schedule property.

2.2. The plaintiff would further submit that in the month of August 2009, she had approached the first defendant to execute and register the sale deed on 10.08.2009. On the said date, she had purchased the stamp papers and prepared the sale deed as instructed by the first defendant and it was also executed and attested by the first defendant. However, the first defendant failed to appear before the Sub Registrar to get the sale deed registered and she kept postponing the same. Thereafter, it appears that the first defendant had created a sale deed dated 17.05.2012 in favour of the second defendant and sold the first item of the suit property to the second defendant.

2.3. The plaintiff would further submit that she is in possession of the property pursuant to the oral agreement and she is entitled to the benefit of Section 53-A of the Transfer of Property



Rev.Appl.No.48 of 2023

2.4. The first defendant filed a written statement *inter alia* denying the oral agreement and receipt of the money. He had further submitted that the signature in the alleged sale deed dated 10.08.2009 is not his signature. He had also denied the claim of the plaintiff that she was in possession of the suit property. It is also the contention of the first defendant that the first item of the property was in the possession of the second defendant to whom it was sold and the second item of the suit property continued to be in possession of the first defendant.

TRIAL COURT and LOWER APPELLATE COURT:

3. The learned District Munsif had decreed the suit, against which, the defendant had filed an appeal in A.S.No.24 of 2016 and the lower Appellate Court, on perusing the evidence, had allowed the appeal and set aside the decree of the Trial Court.

4. Challenging the same, the plaintiff had filed a second appeal in S.A.No.760 of 2022 on the file of this Court.



Rev.Appl.No.48 of 2023

DISCUSSION:

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5. The arguments that were advanced by the learned counsel for the appellant were on the ground that the plaintiff had entered into an oral agreement of sale and she has been put in possession pursuant to this agreement. The sale deed was executed by the first defendant and that he had not co-operated in its registration.

6. The first defendant had denied the signature in the sale deed dated 10.08.2009 and had also denied the very oral agreement of the sale and receipt of sale consideration. The plaintiff has failed to prove the same. Further, according to the plaintiff, the oral agreement of sale and the payment of the entire sale consideration had taken place 15 years prior to the institution of the suit. There is no explanation as to why the plaintiff has kept quiet for these 15 years.

7. Even according to the plaintiff's version, the plaintiff

<https://www.mhc.tn.gov.in/judis> has called the defendant to execute and register the sale deed only



Rev.Appl.No.48 of 2023

on 10.08.2009. The execution of this document has been denied by the defendant, further payment of the sale consideration has not been proved. The plaintiff had examined P.W.3 who is stated to be the attester of Ex.A1 – sale deed. The lower Appellate Court has clearly found that the statement given by the attesting witness with reference to the sale consideration fixed and the payment is totally contrary to the pleading of the plaintiff, which, by itself would disprove the very allegation of the plaintiff.

8. The plaintiff had contended that the total sale consideration fixed was Rs.60,000/- (Rupees Sixty Thousand only) and this amount had been paid at the time of the oral agreement. However, P.W.2 would state that under the sale deed dated 10.08.2009, the total sale consideration was fixed as Rs.75,000/- (Rupees Seventy Five Thousand only) and Rs.35,000/- (Rupees Thirty Five Thousand only) has been paid on the said date. The lower Appellate Court had taken note of this contradiction. This Court in the judgment under Review has concurred with this



Rev.Appl.No.48 of 2023

WEB COPY

9. If the appellant/ plaintiff is aggrieved by this Court's finding in the second appeal with reference to limitation, the remedy is not by filing a review application. A review would lie only if there is an error apparent on the face of record or where a new fact, which was not within the knowledge of the plaintiff earlier and which has come to her knowledge only now. In the instant case, no such plea has been taken. On the contrary, the review applicant has found fault with this Court dismissing the second appeal on the ground of limitation and contended that this finding is erroneous.

Consequently, this review application is dismissed. No costs.

03.01.2024

Index :Yes/No
Internet:Yes/No
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To

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Rev.Appl.No.48 of 2023

1.The Section Officer, V.R.Section,
High Court, Madras.

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Rev.Appl.No.48 of 2023

P.T.ASHA.J.

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Rev.Appl.No.48 of 2023

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S.A.No.48 of 2023

03.01.2024