



Rev. Appl.No.310 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: **13.11.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

Review Application No.310 of 2024
and C.M.P.No.25143 of 2024

M/s.N.Selvaradjalou Chetty Trust,
Represented by its Chairman Mr.S.Kalyanam,
21/10, Armenian Street,
Chennai-600 001.
Branch Office at No.59, Easwaran Koil Street,
Pondicherry-605 001. .. Petitioner

Vs

1. Sarvothaman

Jayalakshmi Ammal (Died)

Anusuya Ammal (Died)

Padmini Chandrasekaran (Died)

Executor under the “Will” of Padmini Chandrasekaran

Sivagamy Ammal (Died, no L.R.)

2. Anusuya Ammal (Transposed as Plaintiff),



Rev. Appl.No.310 of 2024

Somasundaram Chettiar (Died)

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3. T.T.Srinivasan

(Executor under the “Will” of Somasundaram Chettiar
and Kuppammal – Intervening Party).

.. Respondents

PRAYER: Review Application is filed under Section 114 read with Order XLVII Rule 1 of the Code of Civil Procedure, 1908, to review the final order dated 09.08.2024 passed in C.R.P.(PD)No.2766 of 2024.

For Petitioner : Mr.Vineet Subramani
for Mr.R.Premanandan

ORDER

This review petition seeks to review the order passed by this Court in C.R.P.(PD)No.2766 of 2024 dated 09.08.2024. By the said order, I confirmed the order passed by the learned Principal District Judge at Pondicherry in E.A.No.172 of 2022 in E.P.No.300 of 2021 in O.S.No.6 of 1968 dated 04.06.2024.

2. Mr.Vineet Subramani argues that the order passed by this Court on 09.08.2024 requires to be reviewed on more than one ground, namely,

(i) that there is a difference in the schedule of the properties in the Memorandum of Compromise and of compromise decree;

(ii) that the entire compromise decree was not the subject matter of challenge before the High Court in CS.No.149 of 2018;



Rev. Appl.No.310 of 2024

(iii) that the execution petition is barred by limitation; and finally

WEB COPY

(iv) that the review petitioner is a representative interest of the deceased, first defendant and therefore, he cannot be treated as a stranger to the decree.

3. I have gone through the records and have considered the submissions of the petitioner.

4. Before I proceed to discuss in detail, I have to point out that even before the Executing Court, this review petitioner did not project himself as a representative in interest of the deceased, first defendant. A perusal of the petition filed by the review petitioner before the Executing Court in EA.No.172 of 2022 shows that the petitioner claimed himself to be a third party to the execution proceedings. The petition was filed as a claim petition invoking Section 47(3) of the Code of Civil Procedure. Therefore, this shows that the plea of Mr.Vineet Subramani that the review petitioner is a representative in interest of the deceased, first defendant is contrary to the very petition filed by the review petitioner before the Executing Court.



Rev. Appl.No.310 of 2024

5. A verification of the records shows that the original first defendant is no more. She had executed a “WILL”, which was probated before this Court in TOS.No.28 of 1982, dated 28.10.1995. Those proceedings had been initiated by Mr.R.Krishnamoorthy, one of the longest serving Advocate Generals of this Court and highly respected Senior Advocate. It was he who was recognised as the legal representative of the deceased first defendant. In fact, Mr.R.Krishnamoorthy had been shown as the representative of the deceased, first defendant in the execution petition too. It is on record that Mr.R.Krishnamoorthy was not only an executor of the “WILL”, but also a trustee of the trust.

6. I called for the records in order to satisfy myself as to whether Mr.R.Krishnamoorthy had been served with the summons in the execution petition. The records show that the notice was served to him. He was the executor of the deceased first defendant. Notice was served on 17.11.2021. The execution petition was heard on 10.12.2021 and adjourned by the court itself to enable the legal representative/executor to enter appearance for the proceedings on 20.12.2021. Even on that date, since Mr.R.Krishnamoorthy did not enter appearance, he was called



Rev. Appl.No.310 of 2024

absent and set *exparte*.

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7. Mr.Vineet Subramani pleaded that Mr.R.Krishnamoorthy passed away and therefore, he could not have participated in the proceedings. This too is contrary to the records. The affidavit that has been filed by the review petitioner before this Court in CMP.No.24701 of 2024 is relevant here. In paragraph No.18 of the said affidavit, it is stated as follows:

“ The Executor Shri R.Krishnamurthy, Senior Advocate, died on 18.10.2022, ... ”

8. This shows that the executor and legal representative of the deceased, first defendant was alive for nearly 11 months after he had been set *exparte* in the proceedings. Yet, he did not take any steps. When the deceased has been properly represented, a rank third party to a proceeding cannot be pleaded that it is entitled to maintain the application under Section 47 of the Code. In fact, this is the basis of my conclusion when I dismissed the civil revision petition.

9. In paragraph 12 of my judgment, I pointed out that the petition



Rev. Appl.No.310 of 2024

under Section 47 is not maintainable at the instance of a third party. This position is too well settled. I only have to refer to the following verdicts for this proposition:-

- (i) ***P.K.S.Mohammed Sheriff v. S.Mittalal and others***,
CRP(PD).No.895 of 2019 dated 24.11.2021;
- (ii) ***Mittar Bhushan v. Amar Chand Negi and Another, 2022***
SCC Online HP 6446; and
- (iii) ***Radha Raman Jew and Ors. v. Shaligram Subha Karan***
Kemani and Ors., AIR 2001 Cal 78.

10. Further, a casual perusal of Section 47 shows that only the parties to the suit or their representatives alone, are entitled to file an application under section 47. Section 47 does not permit a third party to move an application invoking the said provision. That being the position of law, I do not find any error apparent on the face of the record in order to review my order, holding that the third party cannot maintain an application under Section 47 of the Code.

11. Though this finding is sufficient to dismiss the revision, since



Rev. Appl.No.310 of 2024

Mr.Vineet Subramani made a few more submissions, I shall deal with the same.

12. Insofar as the plea that compromise already arrived at between the parties in the suit and the execution was not the subject matter of the suit in CS.No.149 of 1980 is concerned, I only have to extract the issue No.4 that has been framed by this Court while dealing with the said suit. Issue No.4 reads as follows:

“Whether the compromise dated 20.04.1970 in O.S.No.6 of 1968, on the file of the District Court, Pondicherry is not binding on the plaintiff's shares.”

13. In fact, the Hon'ble Mr.Justice S.S.Subramani in paragraph nos.74 and 75 refused to accept the plea that there is difference between the compromise petition and the compromise decree. He pointed out that, all the litigations have come to an end on account of the compromise and the only bargain for the compromise was family peace. The learned Judge also held that the compromise was acted upon by the parties, by



Rev. Appl.No.310 of 2024

withdrawing all the proceedings that have been pending before several forums including this Court and the Supreme Court.

14. One crucial aspect that I have to point out is, the person who the review petitioner claims to represent i.e. Mrs.Padmini Chandrasekaran, was alive on the date of presentation of the plaint. She never filed a written statement stating that she alone is entitled to the properties which now have been described in the E.P. schedule.

15. In addition, in the execution petition too, no counter had been filed stating that the execution petition has been filed over the properties over which the decree holder has no right. The principle of *resjudicata* applies not only to two different proceedings, but also to two different stages of the same proceedings.

16. The position of law has been settled by the Supreme Court in ***Barkat Ali v. Badri Narain (D) by LRs., (2008) 4 SCC 615***. The Supreme Court held that when a notice to show cause against the execution of a decree is issued under Order XXI Rule 22, it is a final order. When a judgment debtor, despite the notice under Order XXI Rule



Rev. Appl.No.310 of 2024

22, does not raise any objection to the execution, he cannot thereafter be permitted to raise pleas regarding the execution at a subsequent stage.

This is because the plea is barred by principles of *constructive res judicata*.

17. The case that I am presented with, is no different from the one before the Supreme Court. The judgment debtor in this case, though represented by an eminent personality, did not file a counter in the execution proceedings. Therefore, when the executors themselves could not have raised the plea regarding the execution at a later stage, I am unable to understand how a third party, who has filed a claim petition, is entitled to agitate the correctness of the order passed in the execution proceedings.

18. When the 6th judgment debtor, who the petitioner today claims to represent, had not taken a plea, I am afraid, it is not open to “Johnny-come-lately” to take that plea before the Court.

19. I should remember here that the 6th judgment debtor was



Rev. Appl.No.310 of 2024

represented by an executor, who has pointed out above, was one of the longest serving Advocate Generals of this Court and a respected Senior Advocate. Apart from him, there was also an other executor namely, one Mr.H.B.N.Shetty, I.A.S., who again is a respected gentleman in the administrative circles. I find it difficult to accept that a plea, which did not occur to a former Advocate General or to a Senior Administrator, should all of a sudden occur to review petitioner. In any event, since this plea had not been taken at the time as a counter to the execution petition, it is not open to a party, who was not even created at the time of a decree, to take the said plea today.

20. Apart from all these, one aspect which I pointed out to Mr.Vineet Subramani, even at the time when he moved the review petition, was that a review cannot be filed by a counsel, who neither represented the matter nor was present at the time of hearing. Mr.Vineet Subramani took time and addressed arguments on both the maintainability of the review filed by the new counsel as well as on the merits of the order.

21. The Supreme Court in *Tamil Nadu Electricity Board and*



Rev. Appl.No.310 of 2024

another v. N.Raju Reddiar and another, (1997) 9 SCC 736, in clear terms, had held that a review can be entertained only when there is an error of law or fact apparent on the face of the record and that too only by an advocate on record who appeared or was a party in the main case.

22. Mr.Vineet Subramani points out that an advocate cannot be a party in a litigation and therefore, the observation has to be read, **that the** advocate on record who neither appeared in the matter.

23. It is a practice in the High Court as well as in the Supreme Court that one counsel will be an advocate on record and he will take the assistance of another counsel to make his submissions. It is in that light, the dictum of the Supreme Court that the advocate on record or an advocate, who was a party in the main case, has to be understood.

24. In fact, the ready reference is in this case itself. The case was argued by Mr.P.Chandrasekar, when the revision was dismissed. Mr.R.Premanandan has entered vakalat for the review petitioner and the review is being argued by Mr.Vineet Subramani.



Rev. Appl.No.310 of 2024

WEB COPY

25. When the Supreme Court has clearly held that a review should not be entertained at the instance of a new counsel, the hair splitting technicality, that has been pointed out by Mr.Vineet Subramani, certainly does not appeal to me. In fact, this verdict of the Supreme Court has been consistently followed by, at least two Division Benches and several learned Single Judges, of this Court. In order to give an opportunity to Mr.Vineet Subramani to make his submissions, I also heard on the merits of the case.

26. Mr.Vineet Subramani also states that Mr.P.Chandrasekar has filed a vakalat in SR.No.43448 of 2024 and therefore, he should be deemed to have appeared while filing the review.

27. The Supreme Court has not permitted any deviation from the procedure it had laid down in *N.Raju Reddiar's* case. The fact that the review was presented by a new counsel cannot be disputed. By adding the old counsel to the new counsel, after this issue had been flagged by this Court, the new and unbecoming practice that had been pointed out by the Supreme Court, cannot stand cured. The position laid down by the



Rev. Appl.No.310 of 2024

Supreme Court in **N.Raju Reddiar's** case having been consistently followed by this Court, I am bound to apply the same.

28. For the sake of completion, I only have to refer to two Division Bench Judgments of this Court. They are **S.Basheria and Others v. The State of Tamil Nadu and others, (2018) 1 MLJ 695 (DB)** and **K.Ravichandran v. Management of Indo Tech Electric Company, (2021) 1 CTC 676 (DB)**. Both the Division Benches referred to the **N.Raju Reddiar's** case and held, where a review application is filed by a counsel other than the counsel, who had originally moved the matter, then the court should not entertain the same.

29. Finally, I refer to the judgment of the Supreme Court in **Subramanian Swami v. State of Tamil Nadu, (2014) 5 SCC 75**, wherein the Supreme Court held as follows:

“52. ... Thus, even an erroneous decision cannot be a ground for the court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed.



Rev. Appl.No.310 of 2024

*(Vide-Rajendra Kumar v. Rambhai -
MANU/SC/0542/2002 : 2004 (15) SCC 513 : 2010 (3)
SCC (Cri) 584 : AIR 2003 SC 2095). ”*

30. I do not find any error apparent on the face of the record, as the review petitioner, on his own showing is third party to the proceedings. The review petitioner attempts to get over this aspect by pleading that it was a wrong advice by his counsel. I am not willing to accept that plea. This is because the review petitioner argued before me during the cause of hearing of the revision stating that he is a third party. In fact, in the review too, he has shown himself as a third party. It cannot be gotten over by pleading that the petitioner had filed the application on the basis of a wrong advice given by a counsel in Puducherry.

31. For the reasons set forth above, the review petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

13.11.2024

kj/nl

Index:Yes/No

Speaking order/Non-speaking order



Rev. Appl.No.310 of 2024

Neutral Citation:Yes/No

WEB COPY

V. LAKSHMINARAYANAN,J.

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WEB COPY



Rev. Appl.No.310 of 2024

Review Application No.310 of 2024
and C.M.P.No.25143 of 2024

13.11.2024