



Rev.aplc(MD).No.87 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

JUDGMENT RESERVED ON : 05.04.2024

JUDGMENT PRONOUNDED ON : 17.04.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

REV.APLC(MD)No.87 of 2023

in

SA(MD).No.387 of 2021

C.Manoharan

....Review Petitioner/Appellant

Vs

Ramesh Kumar (died)

1.Usha Thanumoorthy

2.Thanumoorthy

3.Bindhu

4.Vivek

5.Swathika

...Respondents/Respondents

Prayer:- Review Application filed under Order 47 Rule 1 R/W Section 114 of C.P.C, to review the judgment and decree dated 07.06.2022 in S.A(MD).No.387 of 2021 on the file of this Court.

1/5



WEB COPY



Rev.aplc(MD).No.87 of 2023

For Appellant : Mr.J.Lawrance

For Respondents : Mr.M.P.Senthil

JUDGMENT

The instant review application has been filed seeking to review the judgment and decree of this Court dated 07.06.2022 made in S.A(MD).No. 387 of 2021.

2.The above second appeal was filed by the plaintiff who was unsuccessful before the Courts below. The said suit was filed for declaration of title and possession over the first item and for declaration of possession and enjoyment over the second item of the suit schedule property. The plaintiff had also prayed for permanent injunction restraining the defendants from trespassing into the suit property. The plaintiff had claimed title on the basis of a Will said to have been executed by one Somasekaran. However, the said Will was not produced. Further, the plaintiff had relied upon Exhibits A22 and A23 which are unregistered documents.

3.On the other hand, the defendants have contended that one Pappu Panicker is the permissive occupant of the suit house and after his death, the



Rev.aplc(MD).No.87 of 2023

plaintiff is continuing in possession in the said capacity. This Court after considering the entire materials on record, had dismissed the second appeal.

4.The learned counsel appearing for the review applicant had contended that even assuming that the plaintiff was not able to prove his title, when the possession of the plaintiff is admitted by the defendants, the suit could have been decreed at least to the extent of protecting the possession of plaintiffs. This aspect has not been considered at the time of disposing of the second appeal.

5.When the plaintiff has not established his title, the consequence is that he has not established his legal right to be in possession of the property. If there is no legal right to be in possession of the property, the question of granting permanent injunction would not arise. That apart, when the plaintiff's ancestors were put in possession of the property as permissive occupant, the possession of the plaintiff should only be continuation of that permissive occupation. A permissive occupant is always holding possession on behalf of the owner. Therefore, the question of protecting his possession by way of permanent injunction as against the true owner of the property does not arise.



Rev.aplc(MD).No.87 of 2023

WEB COPY

6.The submissions made on the side of the review applicant will clearly show that he is attempting to re-argue the appeal on the issues that were already considered and rejected. Therefore, there are no merits in the Review Application and the same is dismissed. No costs.

17.04.2024

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



WEB COPY



Rev.aplc(MD).No.87 of 2023

R.VIJAYAKUMAR, J.

msa

Pre-Delivery Judgment made in
REV.APLC(MD)No.87 of 2023
in
SA(MD).No.387 of 2021

17.04.2024