



Rev.Aplc.(MD).No.169 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT.

Dated : 26.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Rev.Aplc.(MD).No.169 of 2014

and

M.P.(MD).No.1 of 2014

N.Chandrasekaran

... Petitioner

Vs.

C.Subbaiyan

... Respondent

PRAYER: Review Application has been filed under Order 47 Rule 1 r/w Section 114 of C.P.C., to review the order passed by this Court in C.R.P.(NPD)(MD).No.2085 of 2014 in M.P.(MD).No.1 of 2014 dated 06.11.2014 and to set aside the order dated 20.08.2014 made in E.P.No.13 of 2013 in O.S.No.256 of 1991 on the file of the District Munsif, Thiruvaiyaru.

Prayer in CRP(MD). 2085/ 2014 :

To set aside the fair and decretal order dated 20.08.2014 passed in E.P. No. 13/2013 in O.S. No. 256/1991 on the file of the District Munsif court, Thirufaiyaru and allow the present CRP.

For Petitioner : Ms.N.Krishnaveni

: Senior Counsel for
Mr.P.Thiagarajan

For Respondent : Mr.C.Mahadevan



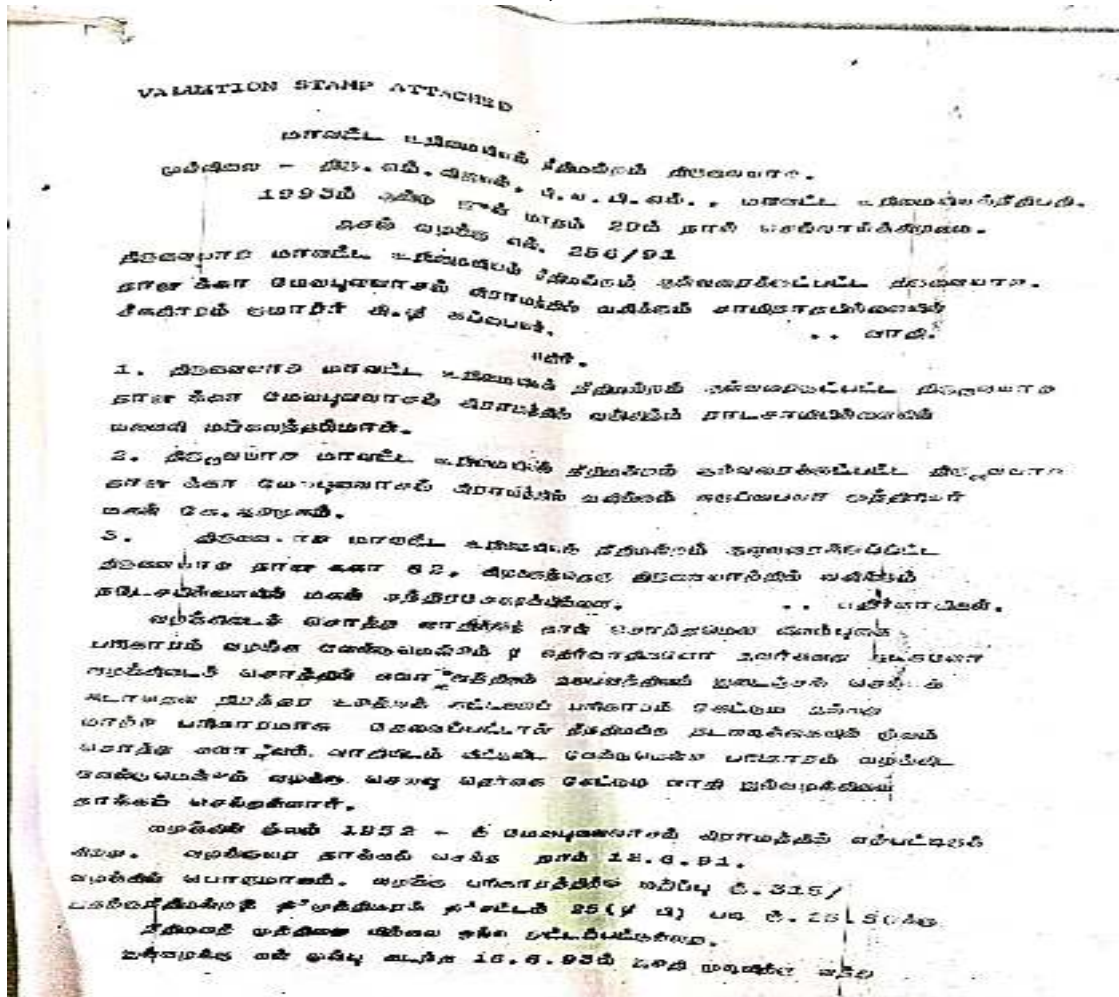
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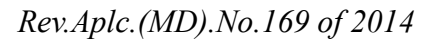
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ORDER

This review application was filed by the petitioner in C.R.P.(MD).No.2085 of 2014, in which, the Court below passed the order in E.P.No.13 of 2013 in O.S.No.256 of 1991 for imprisonment for the alleged violation of the decree in O.S.No.256 of 1991 and confirmed by this Court in S.A.No. (*)1633 of 1995.

2. According to the decree holder, namely, the respondent herein, he has obtained the decree in O.S.No.256 of 1991, which is as follos:





தீர்மானம்

- பொது அமைதி

Exhibit
A - C -

வாழியினைச் செல்லுள் நடனமாட ஆரம்பி .

எழிநீலாடாதுகிழி பசைமுத ளெதாவை மீளாது.

1. கனகசபைத் தலைவர் ப. வி.	2.50
2. மகாநாதர் ப. வி.	2.50



நாளை உதயம் விழா நடப்பதற்கு.
7.11.94.

6. Heard the learned counsel appearing for the cross-objector No. 3/third defendant and the learned counsel appearing for the respondent. Ms. Krishnaveni, the learned Senior Counsel appearing for the third defendant/cross-objector No. 3, submitted that the third defendant has no objection to the plaintiff making any claim viz-a-viz the 'B' Schedule



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property in Ext.B9, or even to the whole of the said 'B' Schedule property but cannot stretch his claim beyond the 'B' Schedule property in Ext.B9, and now he attempts to encroach into 'A' Schedule property therein. The learned counsel submitted that in Ext.A6, there is no reference to Ext.B9 Exchange Deed, and that it proceeds on the basis as if no exchange had taken place. Now that Ext.B9 is before this Court, the plaintiff cannot seek anything on the eastern 44 ft X 470 ft. and must confine his claim to the western 21 ft X 470 ft. The learned counsel also added that the First Appellate Court had also granted the decree of injunction for enforcing which, the plaintiff has preferred E.P.No.13 of 2013 under Order XXI Rule 32 of C.P.C., and an order of arrest has been issued.

7.After weighing the rival submissions, it became apparent that the First Appellate Court has done everything correctly except specifically indicating the property in relation to which the decree for prohibitory injunction would operate. This alone needs to be clarified now. In terms of Ext.B9 which now stands proved, Kamalathammal would have $\frac{1}{2}$ right in a plot measuring 21 ft X 468 ft (or approximately 470 ft). This property is 'B' Schedule property in Ext.B9. As has been recorded earlier, the cross-objectors do not make a claim to this property described as 'B' Schedule property in Ext.B9.

8.In fine, this Cross-Objection is allowed and the decree of the First Appellate Court as concerning the decree for consequential injunction regarding item No.3 alone is modified for greater clarity that it would be



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confined only to 'B' Schedule property in Ext.B9 and not to "A" Schedule property under the said documents. As regards the rest, the decree of the First Appellate Court vis-a-vis third item of the property will stand confirmed. No costs.

4. In the meantime, the decree holder filed E.P.No.13 of 2013 before the execution Court and sought to arrest the petitioner for his violation under the decree. The learned trial Judge has allowed the petition. Aggrieved over the same, C.R.P., was filed before this Court and the same was dismissed.

5. The learned Senior Counsel appearing for the petitioner has submitted that before the trial Court as well as before this Court, in C.R.P., proceedings, a specific submission was made by the judgment debtor, namely, the petitioner that there is no clarity in the finding relating to the entitlement of the extent of the properties. That is why the cross objection was filed and the same was dismissed for non-prosecution. Thereafter the same was restored. The said submission was not considered by the Court below and the review petition was allowed. In view of allowing of the revision petition, which means, the contention of the petitioner that there was no demarcation of the extent of the properties and it was accepted for allowing the cross objection. The plea taken by the judgment debtor, namely, the petitioner before the Execution Court is that there is no clarity relating to the extent of the property in the finding, which is correct. It is well settled that ordering the



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arrest under the civil contempt is serious in nature as per the judgment of the Hon'ble Supreme Court in the case of *Avishek Raja and others vs. Sanjay Kupta* reported in *AIR 2017 (SC) 2955*. The Execution Court must look into the clear wilful negligence and wilful disobedience of the order. There is a plea that there is an ambiguity in the order of the first appellate Court and the same was pending for adjudication of the cross objection and the same has been decided in favour of the petitioner.

6.The Execution Court is restrained from ordering arrest. The same was inadvertently not considered by this Court. It is an apparent error. This Court is inclined to entertain this review petition. The petitioner's case is come under the following parameter laid down by the Hon'ble Supreme Court in the case of *Kamlesh Verma v. Mayawati*, reported in (2013) 8 SCC 320 page 333, which reads as follows:

20.1. When the review will be maintainable:

- (i) *Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
- (ii) *Mistake or error apparent on the face of the record;*



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(iii) Any other sufficient reason.

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7. Accordingly, this Review Application is allowed and the order passed by the Execution Court to arrest the judgment debtor, namely, the petitioner herein is hereby set aside. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

26.03.2024

(*) Amended as per the order of this Court dated 06.02.2025 made in Rev.Aplc. (MD) No.169/2014.

Sd/-

Assistant Registrar (C.O)

// True Copy //

/12/2024

Sub Assistant Registrar
(CS - I/ II / III /IV)

Sbn

TO

The District Munsif,
Thiruvaiyaru.

+1 CC to M/s.C.MAHADEVAN, Advocate (SR-15770[F] dated 27/03/2024)

+1 CC to M/s.P.THIYAGARAJAN, Advocate (SR-16110[F] dated 27/03/2024)



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