



REV APL(MD)Nos.111 & 112 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2024

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

REV.APL(MD)Nos.111 & 112 of 2024

in

C.R.P(MD)Nos.1863 & 1872 of 2017

and

C.M.P(MD)Nos.12558 & 12559 of 2024

REV.APL(MD)No.111 of 2024:

Rajeswari

... Petitioner /
Petitioner

v.

1.Murugappan

2.Meenakshi Achi

... Respondents /
Respondents

PRAYER: Review Application filed under Order XLVII read with Section 114 of Civil Procedure Code to review the common order passed by this Court dated 24.08.2021 in C.R.P(MD)No.1872 of 2017.

For Petitioner : Mr.A.V.Arun

For Respondents : Mr.P.Ganapathi Subramanian



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REV.APL(MD)No.112 of 2024:

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Gandhimathi

... Petitioner /
Petitioner

v.

1.Murugappan

2.Meenakshi Achi

... Respondents /
Respondents

PRAYER: Review Application filed under Order XLVII read with Section 114 of Civil Procedure Code to review the common order passed by this Court dated 24.08.2021 in C.R.P(MD)No.1863 of 2017.

For Petitioner : Mr.A.V.Arun

For Respondents : Mr.P.Ganapathi Subramanian

COMMON ORDER

Heard both sides.

2.The plaintiffs in O.S.Nos.293 & 294 of 2013 on the file of District Munsif Court, Pudukottai is the review applicants herein. The suit is one for permanent injunction. The plaintiffs filed I.A.Nos.351 of 2017 and 1398 of 2016 under Order 6 Rule 17 of CPC for adding certain plaint



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averments. The plaintiffs wanted to include the pleadings that they had perfected their title by adverse possession. Counter was filed by the defendants opposing the prayer in the Interlocutory Applications. The trial Court vide order dated 25.07.2017 dismissed the Interlocutory Applications on the ground that adverse possession cannot be sought by the plaintiffs in the suit. Questioning the same, the plaintiffs filed C.R.P(PD)(MD)Nos.1863 and 1872 of 2017. It was dismissed on 24.08.2021 in the following terms:

“13.The verification of the records reveals that the suit was filed for bare injunction with regard to B schedule property. The claim of the petitioner is that he purchased the B schedule property by way of an oral sale. Now the plaintiff wants to claim title through adverse possession. Originally the plaintiff claim right by way of sale a prayer of ownership through adverse possession is contradictory to the original case. When filing a suit for adverse possession, the title of the other side should be admitted by the plaintiff. The case of the plaintiff in the original plaint is that title is by way of oral purchase. Now the plaintiff wants to change the entire nature of the case, which cannot be entertained.”

Seeking a review of the said order, this application has been filed.



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3.The learned counsel appearing for the review applicants reiterated all the contentions set out in the memorandum of grounds of review petition.

4.The learned counsel for the defendants submitted that the review application proceeds on the premise that the law laid down by the Hon'ble Supreme Court in the decision reported in **(2019) 8 SCC 729 (Ravinder Kaur Grewal & Others Vs Manjit Kaur & Others)** allowing suits to be filed based on the adverse possession had not been taken note of.

5.The learned counsel for the defendants points out that the case on hand would fall outside of the purview of Order 47 of CPC. He contends that the march of law cannot be a ground for review. He called upon this Court to dismiss the review application.

6.I carefully considered the rival contentions and went through the materials on record.

7.It cannot be disputed that the trial Court dismissed the Interlocutory Applications only on the ground that the plaintiffs cannot



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claim adverse possession. This was of course in tune with the law declared by the Hon'ble Supreme Court then. But then, the legal position underwent change in view of the pronouncement in the decision reported in **(2019) 8 SCC 729 (Ravinder Kaur Grewal & Others Vs Manjit Kaur & Others)**. Therefore, the order passed by the trial Court could have very well been set aside by citing the aforesaid decision.

8.In fact, the Hon'ble Judge who disposed of C.R.P(PD)(MD)Nos. 1863 & 1872 of 2017 referred to the aforesaid decision **((2019) 8 SCC 729 (Ravinder Kaur Grewal & Others Vs Manjit Kaur & Others))**. The learned counsel for the review applicants may not be right in his contention that the legal position was not taken note of by the Hon'ble judge who disposed of the Civil Revision Petitions. The Hon'ble Judge was truly cognisant of the same. The dismissal was on the premise that the plaintiffs had not admitted the title of the other side.

9.Such an issue need not be gone into at this stage. It is a case of pre-trial amendment. It has been consistently held by the Hon'ble Supreme Court that pre-trial amendment should be liberally allowed. I am clearly of the view that the order under review has not taken of the statutory scheme



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underlying Order 6 Rule 17 of CPC. I therefore hold there is an error apparent on the face of the record. The impugned order is set aside. Order dated 25.07.2017 passed by the trial Court cannot pass muster in view of the subsequent declaration of law by the Hon'ble Supreme Court laid down in the aforesaid decision.

10. These Review Applications are allowed. The Civil Revision Petitions are also consequently allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

11.09.2024

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