



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28.06.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

Review Application (MD). No. 89 of 2023

and

CMP.(MD).Nos. 15418 & 15419 of 2023

1. Hameeda Beevi
2. Zainabu
- 3.Haja Nazimudeen
4. Kamela Begum
5. Ahmed Kabbar
- 6.Jaffar Ali

...Petitioners/ Respondents 19 to 24

Vs.

- Noorjahan Beevi (Died)
1. Mehaboob Beevi
 - Ibrahim Fathima (Died)
 - 2.Pathamuthu Beevi
 - Anneis Fathima (Died)
 - 3.Syed Meera
 - 4.M.Abdul Rehman
 - 5.Taj Nisha Begum
 - 6.M.Mansoor Ahmed Sait
 - 7.Avva Beevi
 - 8.Sabura Beevi
 - 9.Shakkela Banu
 - 10.Mohamad Sheik Sikkander



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11.P.K.M.Abdul Razak

12.Shajahan

13.Habib Rehman

14.Mohamad Ithrees

15.Sarath Jailani

16.A.Aiyisha Sithika

17.Kanima

18.Inoon Jaria

19.H.Fathima Kani

....Respondents 3 to 19/ Respondents 6 to 22

Tajudeen (Died)

...1st Respondent in A.S

20.S.Abdul Hameed

...20th Respondent/ 2nd Respondents

H.Samsudeen (Died)

...3rd Respondent in A.S

Alima Beevi (Died)

...4th Respondent in A.S

21.S.Kaja Mohideen

22.Naina Mohamad

23.Mohamad Hussain

24.Kaja Bahrudeen

25.Sirajudeen

26.Rahmath Beagum

27.Sithika Beagum

28.Mehraj Beagum

29.Dr.Vasantha Kumari Bose

30.Haji.A.E.S.Raja Hasper Ali

31.Mubarak

32.T.Ahamed Jalaludeen

33.T.Kadar Hussain

34.Seyadu Fathima

...Respondents 21 to 34/ Respondents 5 to 18

Prayer: This Revision Application is filed under Section 114 of



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C.P.C r/w. Order 47 Rule 1 & 2 of C.P.C, pleaded to review the judgment and decree dated 01.06.2023 made in A.S(MD).No.24 of 2010 on the file of this Hon'ble Court.

For Petitioners : Mr.M.Ajmal Khan,
Senior Advocate
for M/s.Ajmal Associates

ORDER

The above Review Petition is filed against the Judgment and Decree dated 01.06.2023 made in A.S.(MD).No.24 of 2010. By the aforesaid Judgment, this Court had allowed the appeal thereby granting the appellants 6/20 share in Item 1 of the suit property and 6/10 share in Items 2 to 4 of the suit properties.

2. The respondents 19 to 24 in the appeal have preferred the above review application. According to the review petitioners, the 2nd item of suit property was purchased by the petitioners 3, 5 and 6 from Masthanammal vide sale deed dated 23.11.1983 and therefore suit item was not available for partition, in view of the said alienation. The review petitioners stated that this Court fell into



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error in reversing the finding of the Trial Court that the suit was bad for non joinder of necessary parties. The suit was contested by the petitioners father, the 3rd defendant in the suit, who filed the xerox copies of the sale deed dated 23.11.1983 which were marked as Ex.B30 to Ex.B32 in support of the plea that the suit property was alienated by Masthanammal to the revision petitioners but this Court erroneously rejected the said documents on the ground that the documents were inadmissible in evidence, over looking that, the plaintiff had not raised any objection to the marking of the documents. The review petitioner's further stated that as they were brought on record in the appeal only as the legal heirs of the deceased 3rd defendant they were not able to produce the original documents before the Court. The review petitioners also stated that sufficient opportunities were not given to them to produce the original documents, even after they were impleaded as parties in the appeal on 27.06.2022. The petitioners therefore prayed that the Judgment of this Court on issue No. 2 deserved to be reviewed.



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3. The learned Senior counsel appearing for the petitioners when queried on what was the error apparent on the face of the record in the Judgment of this Court, clearly conceded that there was no apparent error, but as the documents Ex.B30 to Ex.B32 were rejected only on the ground that originals were not filed by this review application the petitioners seek an opportunity to produce the original documents which were not earlier filed. The learned counsel relying on provisions of Order 47 Rule 1 of C.P.C, submits that review of Judgment can be permitted when there is discovery of new and important matter or evidence which, after exercise of due diligence, was not within the knowledge or could not be produced at the time when the decree was passed or made. According to the learned counsel, the original documents were misplaced and could not be retrieved even after due diligence and persistent search until review application was filed and therefore the review petition should be allowed. No other point was argued before this Court at the time of admission.

4. The provisions of Order 47 relating to discovery of new



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and important matter or evidence cannot be applied to the facts of the present case, because the evidence that is sought to be produced is not new but which was already available before the Court by way of xerox copies under Ex.B30 to Ex.B32. This Court while considering the admissibility of Ex.B30 to Ex.B32, categorically held that the said documents were inadmissible in evidence, because they were only xerox copies and the same were filed without making out a case for receipt of secondary evidence. It is further pertinent to note here that the petitioners 3, 5 and 6 were brought on record as legal heirs of the 3rd defendant in the appellate stage on 27.06.2022 and the Judgment in the appeal was delivered on 01.06.2023. The petitioners though on record in different capacity were very much aware of their rights and inspite of having sufficient time of almost one year did not file any application for receipt of the original documents. In the affidavit filed in support of the review application, it is merely stated that original documents were misplaced and could not be retrieved, after due diligence and persistent search. I am afraid the mere statement that the



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documents were misplaced will not help the petitioners in establishing due diligence. It is pertinent to note here that sub Rule 2 of Rule 4 of Order 47 relating to grant of applications, proviso 'b' stipulates that no application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or when the decree or order was passed or made, without strict proof of such allegation.

5. As already stated except the *ipsi dixit* of the petitioner, there is absolutely no proof for the allegation that the documents were misplaced and could not be retrieved earlier. It is also pertinent to note that the petitioners in another breath state that they could not produce the original because they were brought only as the legal heirs of the 3rd defendant in the suit. If the originals were misplaced then how could they have filed it if they were added as parties? In any event, even otherwise, it is not a case of new evidence being brought on record, as the xerox copies of the documents Ex.B30 to Ex.B32 were already filed before the Trial Court. In my view, the petitioners have filed the Review



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Application only to fill up the lacuna in their case.

It is trite that, review jurisdiction cannot be invoked for filling up the gaps in the case. Therefore in the light of the above facts, I find no ground for review and hence the Review Application is dismissed at the admission stage itself. No costs. Consequently, connected CMP's are closed.

28.06.2024

dsn

Index: Yes/No

Speaking Order: Yes/No

Neutral citation: Yes/No

Note:

Registry is directed to return the original documents to the petitioners.



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N.MALA,J.

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