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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	10.07.2025
Pronounced on	01.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

Rev.Appl.No.123 of 2025 and
CMP.No.15412 of 2025

Arjuna Gounder

... Applicant / Respondent

Vs.

1.Pachaiammal

2.Mannammal

... Respondents / Appellants

Prayer: Review Application is filed under Section 114 R/w Order 47 Rule 1 of CPC., to review the decree and judgment in S.A.No.1139 of 2010 dated 04.01.2022.

For Applicant : Mr.C.Samivel

ORDER

This Review Application has been filed by the respondent in S.A.No.1139 of 2010, seeking review of the judgment dated 04.01.2022.

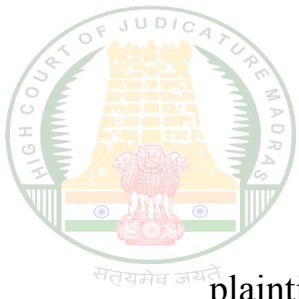


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2. Heard the learned counsel for the applicant.

3. The Second Appeal No.1139 of 2010 had been filed by the plaintiff and the second defendant in O.S.No.75 of 2007 on the file of the Additional Sub Court, Tindivanam. By judgment dated 22.10.2009, a decree was passed that the plaintiff and the second defendant were each entitled to an undivided 1/3 share in A and B schedule properties excluding the 5th and 6th items in A schedule property and 10th item in B schedule property. It was further decreed that the plaintiff and the second defendant were entitled to receive the amount of Rs.10,000/- each lying in the Fixed Deposit in the name of Annadurai.

4. Questioning that judgment and decree, the first defendant had filed A.S.No.12 of 2010 before the Principal District Court, Villupuram. By judgment dated 23.04.2010, the said Appeal Suit was allowed and the suit in O.S.No.75 of 2007 was dismissed by setting aside the judgment and decree dated 22.10.2009 passed by the Additional Sub Court, Tindivanam.



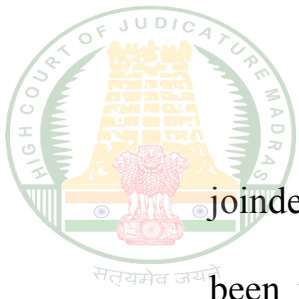
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5. Challenging that judgment of the First Appellate Court, the plaintiff and the second defendant had filed Second Appeal in S.A.No.1139 of 2010. The Second Appeal had been admitted on the following substantial question of law:

"Whether the judgment of the First Appellate Court is vitiated by failure to appreciate the relevant materials on record and by non-application of the correct principles of law?"

6. A learned Single Judge of this Court by judgment dated 04.01.2022 had answered the above substantial question of law that the First Appellate Court, without appreciating the evidence in proper perspective had allowed the First Appeal and therefore, had set aside the judgment and decree of the First Appellate Court and allowed the Second Appeal and restored the judgment and decree of the Trial Court. This judgment is now sought to be reviewed in the present application.

7. The learned counsel for the applicant argued that there were two issues which had been raised in the suit viz., whether the properties are ancestral properties or self acquired and whether the suit is bad for non-



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joinder of necessary parties. It had been stated that those issues which had been framed by the Trial Court had not been considered in their proper perspective in the Second Appeal.

8. The learned counsel further stated that the Trial Court had erred by holding that the suit properties are joint family properties of the plaintiff and the second defendant and contended that there was no evidence for the same. It is also contended by the learned counsel that the Trial Court had come to a wrong conclusion that the properties had been allotted to the first defendant under Ex.A1 which is a partition deed dated 20.08.1987.

9. The learned counsel for the applicant further argued that the Trial Court had failed to note that the 10th item of B schedule property had been purchased in the names of the sons of the first defendant viz., Karunanithi and Annadurai, born through his second wife Devaki. Therefore, the said properties were separate properties and therefore, the sale proceeds which had been kept in Fixed Deposit should not have been granted to the plaintiff or to the second defendant.



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10. The learned counsel further argued that the Trial Court had wrongly concluded that the properties were ancestral properties even though necessary evidence had been given that they were self-acquired properties. He further stated that the suit for partition should have been dismissed.

11. He argued that in the Second Appeal, the learned Judge had failed to appreciate the evidence in their proper perspective and had confirmed the judgment of the Trial Court. He argued that therefore, the judgment in the Second Appeal has to be reviewed by this Court by once again re-appreciating the evidence relating to the nature of the properties and must come to a conclusion whether the properties are self-acquired properties and not ancestral properties.

12. I have carefully considered the arguments advanced on behalf of the applicant.

13. Even before proceeding further, it would only be appropriate to record the provisions of Code of Civil Procedure relating to a Review Application.



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14. Section 114 of the Code of Civil Procedure is as follows:

"114. Review -- Subject as aforesaid, any person considering himself aggrieved --

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code, or

*(c) by a decision on a reference from a Court of Small Causes,
may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit."*

15. Order XLVII Rule 1 of the Code of Civil Procedure is as follows:

"1. Application for review of judgment --

(1) Any person considering himself aggrieved,--

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,



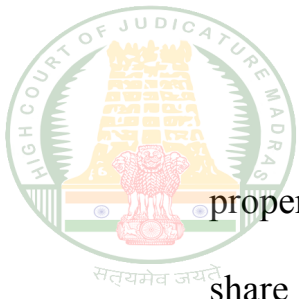
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and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review."

16. In this Review Application, the primary grievance raised by the learned counsel for the applicant is regarding the conclusion reached about the nature of the properties. The Trial Court had framed specific issues as to whether the properties for which partition had been sought by the plaintiff were ancestral properties or self-acquired properties. On the basis of the evidence, the Court had come to a conclusion that they were ancestral



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properties and accordingly, granted a preliminary decree determining the share of the plaintiff and the second defendant. It is the case of the first defendant that the properties were self-acquired properties. The first defendant had filed the First Appeal and the First Appellate Court had upheld that contention and reversed the judgment of the Trial Court. In the Second Appeal, the learned Single Judge had examined the evidence and had come to a conclusion that the properties were ancestral properties.

17. The learned Single Judge had placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Rohit Chauhan vs. Surinder Singh** reported in **AIR 2013 SC 3525**, wherein, it had been held in paragraph Nos.11 and 29 as follows:

“11. We have bestowed our consideration to the rival submission and we find substance in the submission of Mr.Rao. In our opinion coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. Coparcenary is a narrower body than the Joint Hindu family and before commencement of Hindu Succession (Amendment) Act, 2005, only male members of the family

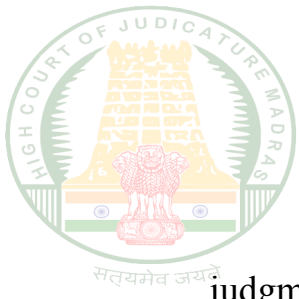


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used to acquire by birth an interest in the coparcenary property. A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and one has to bear in mind that it enlarges by deaths and diminishes by births in the family. It is not static. We are further of the opinion that so long, on partition an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener. The view which we have taken finds support from a judgment of this Court in the case of M.Yogendra v. Leelamma N., (2009) 15 SCC 184, in which it has been held as follows:

“29. It is now well settled in view of several decisions of this Court that the property in the hands of a sole coparcener allotted to him in partition shall be his separate property for the same shall revive only when a son is born to him.”



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18. The learned Single Judge had also placed reliance on the judgment of this Court in the case of ***P.Duraisamy and Others vs. D.Latha and Others***, reported in **2019-5-L.W.489**, with specific reference to paragraph No.17 which is as follows:

“17. The character of the properties that ancestral joint family property, is admitted. Once Pachiammal is found to be the first wife of the first defendant Duraisami, then by virtue of the Hindu Succession Amendment Act, 39 of 2005, Duraisami the first defendant, Selvakumar the second defendant and the plaintiffs would be entitled to equal shares as coparcenors in the joint family. Therefore, each one of them would get 1/4th share. The defendants 3 to 6, who are children of the first defendant through Bothamani @ Maniammal, would not get a right by birth in the suit properties and they would not be entitled to a share till Duraisami is alive. Therefore, the Courts below should have granted a decree for 2/4th share in favour of the plaintiffs instead of 2/8th share.”

19. The learned Judge had also placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Vineeta Sharma vs. Rakesh Sharma***



reported in **AIR 2020 SC 3717**, with specific reference to paragraph

No.129(i) which is as follows:

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“129. Resultantly, we answer the reference as under:

(i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.”

20. It is settled principle that the scope of the Second Appeal is quite narrow and wherein, a substantial point of law has to be determined and to a limited extent, the facts can be re-appraised. In a Review Application, the scope is narrower and entire issues cannot be re-agitated.

21. In this regard, it is worthwhile to refer the following cases:

"13. In (1997) 8 SCC 715 [Parsion Devi and Others Vs. Sumitri Devi and Others], the Hon'ble Supreme Court has held as follows:-

“9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self



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evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has limited purpose and cannot be allowed to be "an appeal in disguise.

10. Considered in the light of this settled position we find that Sharma, J. clearly over-stepped the jurisdiction vested in the court under Order 47 Rule 1 CPC. The observation of Sharma, J. that "accordingly", the order in question is reviewed and it is held that the decree in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory injunction were provided" and as such the case was covered by Article the scope of Order 47 Rule 1 CPC. There is a clear distinction between an erroneous decision and an error apparent on the face of



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the record. While the first can be corrected by the higher forum, the later only can be corrected by exercise of the review jurisdiction. While passing the impugned order, Sharma, J. found the order in Civil Revision dated 25.4.1989 as an erroneous decision, though without saying so in so many words. Indeed, while passing the impugned order Sharma, J. did record that there was a mistake or an error apparent on the face of the record which not of such a nature, "Which had to be detected by a long drawn process of reasons" and proceeded to set at naught the order of Gupta, J. However, mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in exercise of the review jurisdiction. Recourse to review petition in the facts and circumstances of the case was not permissible. The aggrieved judgment debtors could have approached the higher forum through appropriate proceedings, to assail the order of Gupta, J. and get it set aside but it was not open to them to seek a "review of the order of petition. In this view



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of the matter, we are of the opinion that the impugned order of Sharma, J. cannot be sustained and accordingly accept this appeal and set aside the impugned order dated 6.3.1997.”

14. In (2008) 11 SCC 107 [T.Thimmaiah (dead) by Lrs. Vs. Venkatachala Raju (dead) Lrs.], the Hon'ble Supreme Court has held as follows:-

“2. During the course of hearing, the learned counsel for the appellant has pointed out that a bare perusal of the order in review would reveal that it is based on a complete reappraisal of the matter on facts and the provisions of Order 47 Rule 1 of the Code of Civil Procedure which would govern an application for review, have been completely ignored. It has been submitted by the counsel that the Single Judge had, in the first Judgment, examined the facts and dismissed the appeal and on a reconsideration of the same facts, had allowed the same, which was not justified. We find merit in this plea. From a bare perusal of the Judgment in review, it is clear that the principles laid down under



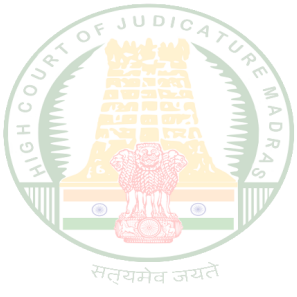
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Order 47 Rule 1 CPC have been completely ignored. We accordingly allow the appeal, set aside the order in review dated 26.2.2001 and dismiss the appeal in the suit. We, however, give liberty to the respondent herein to challenge the Judgment dated 16.2.1999, if so advised.”

15. In (2018) 4 SCC 587 [Sivakami and Others Vs. State of Tamil Nadu and Others], the Hon'ble Supreme Court has held as follows:-

“18. The scope of the appellate powers and the review powers are well defined. The power of review under Order 47 Rule 1 of the Code of Civil Procedure, 1908 is very limited and it may be exercised only if there is a mistake or an error apparent on the face of the record. The power of review is not to be confused with the appellate power. The review petition/application cannot be decided like a regular intra court appeal. On the other hand, the scope of appeal is much wider wherein all the issues raised by the parties are open for examination by the Appellate Court.



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19. A fortiori, what was not decided in appeal by the Division Bench could not be decided by the Division Bench while deciding the review application. It is for this reason, we are also constrained to set aside the review order. ””

22. The ratio laid down in the above cases are binding. The learned counsel for the applicant had not pointed out any error on the face of the record, but, had only pointed out that the conclusion reached about the nature of the properties viz., whether they are ancestral properties or self-acquired properties is wrong. That issue can never be examined in a Review Application. As held in the judgments cited, a Review Application cannot be heard as a regular intra-court appeal.

23. It is the further contention of the learned counsel for the applicant that an alternate finding should have been given in the Second Appeal that the properties are self-acquired properties. I am afraid that the learned counsel is calling upon the Court to re-examine the same issues which have



already been decided and a judgment had been pronounced in the Second Appeal.

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24. In view of the above reasons, I hold that the Review Application must necessarily fail and accordingly, the same is dismissed. No order as to costs. Consequently, connected miscellaneous petition is also closed.

Speaking order

01.08.2025

Index : Yes

Neutral Citation : Yes

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C.V.KARTHIKEYAN, J.

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