

Review Application No.80 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 25.09.2025

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Review Application No.80 of 2025

Sethuraman (died)

2.Muthazhagan

.. Petitioners

Vs.

1.Arulsamy

2.Andavan

3.Sivamalai

4.Jothi

5.Tamilselvi

6.Kalaiselvi

.. Respondents

Prayer: Review Application filed under Order XVII Rule 1 read with Section 114 of C.P.C., praying to review the judgment and decree dated 05.06.2020 made in S.A.No.1178 of 2005 by this Court, by allowing the present civil review petition.

For Petitioner : Mr.A.Gouthaman

ORDER



This review petition seeks to review and set aside the judgment and

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decree in SA.No.1178 of 2005 dated 05.06.2020.

2.The review petitioner is the 2nd defendant in OS.No.371 of 1996.

One, Veerasamy Padayachi presented OS.No.371 of 1996 seeking declaration of his title and for relief of permanent injunction.

3.The case of the plaintiff is as follows:

A larger portion of the suit schedule property belonged to one, Gopal Padayachi. The larger extent being 92 cents. Out of the 92 cents, Gopal Padayachi sold an extent of 16 cents in favour of his brother, Thiruvengada Padayachi on 30.03.1930. The sale was by way of a registered document under Ex.A2. After Thiruvengada Padayachi passed away, the children of Thiruvengada Padayachi entered into a partition deed. This deed is dated 03.07.1960.

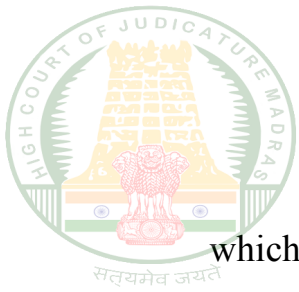
4.In the partition, the suit schedule mentioned property, to an extent of 16 cents was allotted to the share of one of the sons of Thiruvengada Padayachi, namely, Ramalinga Padayachi. Ramalinga Padayachi sold the property under Ex.A1 to the plaintiff on 18.10.1995.



Fearing that the defendants will dispossess him from the property and since there was a cloud over his title, he came with the aforesaid suit.

5.Summons were served on the defendants. They entered appearance and filed a detailed written statement. The defendants conceded that the original owner of the property was Gopal Padayachi. They pleaded that Gopal Padayachi had a son by name Rajalinga Padayachi. The said Rajalinga Padayachi was drowning in debts. He had incurred the debts from one, Duraisamy Mudaliar. The said Duraisamy Mudaliar, in order to realize the debts, presented OS.No.132 of 1955 on the file of the District Munsif Court at Ariyalur. He obtained a decree and put the decree into execution. The property was attached and sold in EP.No.1125 of 1955 by way of an auction held by the same Court. In the sale so held, the property was purchased by one, Shanmuga Mudaliar on 30.11.1956. The sale included the suit schedule mentioned property. On the basis of the sale certificate, Shanmuga Mudaliar filed an application for delivery of possession and also took delivery of the same on 16.03.1957.

6.The subject matter of sale was the entire extent of 92 cents,



which had been in possession and enjoyment of Gopal Padayachi and, thereafter, with his son Rajalinga Padayachi. Shanmuga Mudaliar sold the property in favour of one, Chellaiah Padayachi by way of registered sale deed on 16.12.1957. Chellaiah Padayachi's children, in turn partitioned the property amongst themselves on 21.10.1993. The 92 cents, which was purchased by way of Court auction by Shanmuga Mudaliar and then sold to Chellaiah Padayachi, fell to the share of the 2nd defendant, Muthazhagan, the son of Chellaiah Padayachi, in the partition deed. He pleaded that as he is in possession of the property and he is the owner of the same, the relief sought for in the suit is absolutely untenable and sought for dismissal of the appeal.

7.On the basis of these pleadings, issues were framed and parties went for trial. After an analysis of the oral and documentary evidence, the Trial Court dismissed the suit.

8.Aggrieved by the same, the plaintiff preferred a regular appeal in AS.No.6 of 2000 on the file of the Sub Court at Ariyalur. After re-appreciating the evidence, the learned Subordinate Judge allowed the appeal and decreed the suit as prayed for on 02.11.2004.



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9. Against the reversal of the decree, the defendants preferred second appeal in S.A.No.1178 of 2005. This Court admitted the second appeal on the following substantial questions of law:

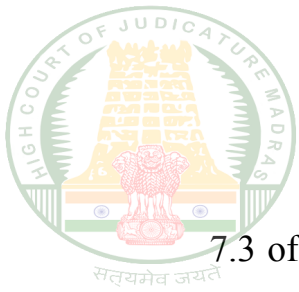
“(1) Whether the decree for declaration based upon the opinion of Commissioner regarding possession is valid in the eye of law?

“(2) By considering Exs.A-2 and A-1, whether the principle Nemo dat quod non habet (i.e. no one can have a better title than what he had) was applied properly?”

10. The appeal was taken up for disposal by Hon'ble Mr.JUSTICE N.SESHASAYEE. The learned Judge pronounced the judgment on 05.06.2020, confirming the judgment and decree of the Lower Appellate Court, and upholding the decree granted for declaration of title and injunction. Aggrieved by the same, the present review application.

11. I heard Mr.A.Gouthaman for the review petitioner.

12. Mr.A.Gouthaman invited my attention to paragraph Nos.7.2 &



7.3 of the judgment under review and pleaded that the learned Judge had placed reliance upon the statement made by DW2, Shanmuga Mudaliar who had deposed that he never took possession of the property. He urged the learned Judge placed reliance upon the report of the Advocate Commissioner to find out as to who is in possession of the property. He also points out that the learned Judge did not answer the first substantial question of law and, therefore, there is an error apparent on the face of the record and the judgment needs to be reviewed.

13.I have carefully gone through the judgment. I have perused the materials in paper, including the judgment of the Trial Court and the Lower Appellate Court and that of this Court dated 05.06.2020.

14.At the outset, I should point out that a review is not an appeal in disguise. In order to enable this Court to review its judgment, the review petitioner should point out the error apparent on the face of the record. Unless and until, this *sine-qua-non* is satisfied, it is not open to this Court to rip up a dismissal and admit to re-hear the matter entirely.



15.It would not take me much time to dispose of the first two pleas.

Mr.A.Gouthaman refers to Paragraph Nos.7.2 & 7.3 of the judgment to seek a review. A careful perusal of the judgment shows that, till paragraph No.7.2 & 7.3 of the judgment, the learned Judge had merely extracted the arguments of the learned counsel for the respondents. This is clear, because the learned Judge has prefaced paragraph No.9 with the sub-heading “*of discussion and decision*”. The learned Judge has recorded, as any Judge ought to do, the submissions made by the counsels before him. Recording of submissions cannot be construed as a finding by the learned Judge.

16.Insofar as the plea that the learned Judge has not answered the first substantial question of law is concerned, I have to point out that both the substantial questions of law framed pertained to whether the plaintiff had title to the property. If the vendor of the plaintiff had title, obviously whatever he conveyed by way of sale deed gets crystallized into title of the purchaser. Title cannot reside in a vacuum. Title and vacuum are mutually exclusive.



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17.The sale deed under Ex.A2 being a registered document shows that, whatever right Gopal Padayachi had with 16 cents of the property, stood transferred in favour of Thiruvengada Padayachi as early as 1930. The Court refused to place reliance upon the same stating that the presumption prescribed under Section 90 does not apply to a certified copy. This view of the Trial Judge cannot be disputed. It is beyond cavil that Section 90 of the Evidence Act applies only to original documents and not to certified copies thereof. But as rightly held by the Lower Appellate Court, such a decision is totally unnecessary.

18.The issue was whether Thiruvengada Padayachi had gotten title to 16 cents by virtue of Ex.A2. The document is of the year 1930. The suit is of the year 1996. By no stretch of imagination, unless and until, the vendor and the vendee are blessed with the same life span as a few inhabitants of Japan are, they certainly would not have been alive to enter the witness box and depose in support of the document.

19.The title deed is Ex.A1. The parent document of the plaintiff is Ex.A2. When it is undisputed that Gopal Padayachi was the original owner, and the transfer of title from him to Thiruvengada Padayachi is a



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voluntary one, the burden of proof on the person relying on a Court auction sale is heavy. This is because, there is no warranty of title in a Court auction sale. What is brought for sale in a Court auction is not title to the property, but the right, title and interest of the judgment debtor.

20.The title of Gopal Padayachi, at least in respect of the 16 cents out of 92 cents, having already stood transferred in favour of Thiruvengada Padayachi 27 years earlier to the Court sale, then the Court auction sale would obviously have to be viewed in a strict manner. If title to 16 cents vested with Thiruvengada Padayachi by Ex.A1, this portion could not have been inherited by Rajalinga Padayachi. Consequently, the Court sale would not cause a dent over the plaintiff's title.

21.The learned Judge has recorded the fact that no evidence has been let in by the defendants to prove that Ex.A2 cannot be relied upon. This is a finding the learned Second Appellate Court has come to a conclusion on the basis of Ex.A1, Ex.A2 and on basis of the settled principle that Court auction sale is not a warranty of title. Hence, I am of the view that there is no error apparent on the face of the record.



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22. In the light of the above discussion, I have no other option than to dismiss the review application. Accordingly, the Review Application stands dismissed. No costs.

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

V.LAKSHMINARAYANAN, J.



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