



Rev.Aplc.No.344 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.03.2025

Delivered on : 25.03.2025

CORAM:

THE HONOURABLE MR JUSTICE P.B. BALAJI

Rev.Aplc.No.344 of 2024

in

S.A.No.414 of 2017

Indira Deviammal (died)

1.Hemanthraj

... Review Petitioner / Appellant

Vs.

A.C.Lakshmipathy (died)

A.C.Kulasekara Reddiar (died)

A.S.L.Rajan (died)

1.Venkataraman

2.Sarojini

3.Ramachandran

4.Navaneetham

5.A.J.Saraswathi

Logambal (died)

6.Kuppabai

Seetharaman (died)



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7.Ramachandran

8.Seethalakshmi

9.Anusuya

10.Kanchana

11.Manjula

12.Hemalatha

13.Venkatachalam

14.Muthamizhselvi

15.Varadharajan

16.P.Veeraraghavan

17.Hema Srivathsan

18.Kamala

19.Banumathi

20.Lakshmi

21.Venkates Prasad

(R19 to 22 brought on record as
LRs of deceased 12th respondent by
order dated 26.09.2023) ... Respondents / Respondents

Prayer:- Review Petition filed under Order 47 Rules 1 & 2 r/w. Section 114
of the Code of Civil Procedure, to review the judgment and decree dated
01.03.2024 passed in S.A.No.414 of 2017 on the file of this Court.

For Petitioner : Mr.Duraikkan S.Phillip

For Respondents : Mr.P.Asokan for R2, 13

: Mr.M.Balasubramanian for R16-21



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: No appearance for R3-12, 14 & 15

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ORDER

The instant Review Application has been filed seeking to review the judgment and decree passed in S.A.No.414 of 2017, dated 01.03.2024.

2. I have heard Mr.Duraikkan S.Phillip, learned counsel for the review petitioner, Mr.P.Asokan, learned counsel for the respondents 2 and 13 and Mr.M.Balasubramanian, learned counsel for the respondents 16 to 21. I have also gone through the records.

3. The petitioner in this review application is the appellant in the second appeal. The second appeal was heard by me and was dismissed, after considering the arguments advanced by the parties to the second appeal, considering the grounds of challenge to the judgment and decree of the Courts below.

4. The learned counsel for the review petitioner, Mr.Duraikkan S.Phillip, would contend that the review has been filed primarily on two



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grounds, viz., (i) attacking the issue of limitation being decided as the first issue, without going into the issues on merits and (ii) possession with the defendants not being admitted by the plaintiff. The learned counsel for the petitioner would fairly concede that the Hon'ble Supreme Court has also recently held that when the Court finds that the suit is barred by limitation, there would be no requirement to go into other aspects. He would therefore submit that the first ground taken in the review does not survive.

5. The learned counsel for the review petitioner however would submit that the finding rendered that defendants filed Ex.B1 to B52 to establish their possession from 1971 onwards is an error apparent on the face of record. In this regard, he would take me through Ex.B26 / sale deed executed by one Chakrapani and defendants 1 and 2 in favour of the third defendant and contend that the said sale deed was only in respect of paimash No.590/5 and not paimash No.585/3 and that there is absolutely no correlation to survey No.89/15. He would therefore submit that the reliance placed on Ex.B1, B10, B11, B14, B27 and B40 would be of no avail to vest any title with the defendants as the third defendant, the vendor himself did not have valid title to hold the lands. As regards the plotting



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out of the layout in 1974, the learned counsel would contend that under Ex.A9, dated 21.05.2000, a *denovo* enquiry was directed, subject to civil Court verdict, without going into the correlation of paimash No.590/5 to survey No.89/15. He would further contend that the revenue authority produced the records before this Court to show that paimash No.590/5 correlated only to survey No.89/6 and not 89/15. In this regard, he would take me through Ex.A11 and A12 as well as the examination of P.W.2 and P.W.3, official witnesses. He would therefore contend that the finding that possession was admitted to be with the defendants and from 1974 is erroneous on the face of the record. He would further contend that there is no admission of the defendants' possession prior to 1982 and in cross examination, the plaintiff has merely stated that there are houses constructed as on the date of his cross examination on 18.10.2010.

6. Referring to Ex.B28 / building approval plan, Ex.B4/ EB card, Ex.B5/ property tax receipt, Ex.B8 and B9 / building plan, Ex.B17 and B18/ building plans, the learned counsel would contend that all these documents are only after 1982 and do not affect the suit on the ground of limitation. He would therefore, pray for the review application being



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allowed.
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7. Per contra, Mr.P.Asokan, learned counsel appearing for the respondents 2 and 13, would contend that even in 1972, the property was purchased by the Promoter and in 1974, a lay out had been promoted. He would further contend that the appellant was never vigilant or diligent and claims to know about the development only in the year 1982. However, according to Mr.P.Asokan, the plaintiff has not even whispered as to how the plaintiff came to know in the year 1982 and even then, for 5 years, therefore no action was taken and the suit was filed only in the year 1987. Therefore, the learned counsel for the respondents 2 and 13, Mr.P.Asokan, would pray for dismissal of the review application, contending that there is no error apparent on the face of record, entitling the review applicant, to seek review of the judgment in the second appeal.

8. Mr.M.Balasubramanian, learned counsel appearing for the respondents 16 to 21, would also contend that there is no error apparent on the face on record. According to him, the suit has been filed after 12 years after the lay out was promoted and I have already dealt with in great detail



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the factual matrix in coming to the conclusion, the suit for hopelessly is barred by limitation. He would further contend that the appellant is not an illiterate person, but a Doctor, and therefore, having slept over her rights, the petitioner cannot approach the Court belatedly and seek relief, especially when plots have been sold to various innocent third parties, who have also put up construction after obtaining planing approvals and also expending their hardened savings. Therefore, he would pray for dismissal of the review application.

9. I have carefully considered the submissions advanced by the learned counsel on either side.

10. As rightly contended by Mr.Duraikkan S.Phillip, finding that the suit was hopelessly barred by limitation, I have dismissed the second appeal, without going into the other issues that have been raised in the second appeal. With regard to the decision on the question of limitation going against the appellant, there was no necessity felt to go into the other issues. The said view of mine is fortified by the decision of the Hon'ble Supreme Court in the case of *Foreshore Co-operative Housing Society*



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Limited V. Praveen D.Desai (dead) reported in **2015-6-SCC-412**, where the Hon'ble Supreme Court held that the Court was bound to dismiss the suit as barred by limitation and the Court was not required to adjudicate the matter on merits, once it is found that the suit is barred by limitation. In a recent decision of the Hon'ble Supreme Court in the case of **Usha Devi and others V. Ram Kumar Singh and others** reported in **2024-SCC-Online SC-1915**, the Hon'ble Supreme Court held that the suit was liable to be dismissed on the ground of limitation alone and there was no necessity to enter into other issues.

11. With regard to the plaintiff's entitlement, I have found that having set out in the plaint that the plaintiff's husband came to know about the possession of the property being with the third parties even in the year 1982, the suit came to be filed only in August 1987 and even for establishing that the plaintiff knew about the said position only in 1982, no documents have been filed to the satisfaction of the Court. I have further found that if really the plaintiff's husband came to know about the encroachment into his valuable immovable property, even in 1982, the plaintiff's husband would have atleast lodged a police complaint or issued a



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lawyer's notice. Finding that there is no such action taken by the plaintiff's husband, I have doubted the very averment in the plaint that the plaintiff came to know about the encroachment only in the year 1982.

12. Pitting this finding against the fact that the lands were laid out in the year 1974 in the form of plots, I have proceeded to non-suit the plaintiff on the ground of not filing the suit, within a period of 12 years, from the date of possession becoming adverse to the plaintiff's husband and that the date of knowledge of encroachment or trespass would not even be available to the plaintiff to contend that the suit is not barred by limitation. No doubt, I have mentioned that the lands being laid down in the year 1974 is an admitted possession. In fact, it should have been an admitted position and not admitted possession. However, it will not take the review petitioner's case any further. I have found that the lay out was sanctioned prior to 12 years, from the date of filing of the suit and therefore, the plaintiff cannot get over the bar of limitation. With regard to the admission as P.W.1, I have only referred to the fact that the plaintiff is aware of houses being constructed, after a lay out was found and that both the Courts below had relied on the said admissions to negate the plaintiff's pleadings, in the plaint and that such findings did not require interference



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under Section 100 of the Code of Civil Procedure.

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13. As regards correlations also, in view of the bar of limitation, I have held that even if there is a mis-description of paimash number, the plaintiff having slept over her right, was not entitled to any relief. Therefore, I have already considered all these submissions advanced by the learned counsel on either side, while disposing of the second appeal and I do not find any mistake or error apparent on the face of the record to review the judgment in S.A.No.414 of 2014. It is also not the case of the review applicant that there is some discovery of new important matter or evidence, despite due diligence, not being within this knowledge could not be produced before the decree came to be passed. Under the guise of a review, the second appeal cannot be re-agitated and re-assigned.

14. Therefore, no justifiable grounds are made out for reviewing the judgment of the second appeal. Accordingly, this Review Application is dismissed. There shall be no order as to costs.

Internet : Yes
Index: Yes/No

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Neutral Citation: Yes/No

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To

1. The Principal District Judge,
Kancheepuram District at
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2. The Subordinate Judge,
Tambaram.
3. The Section Officer,
VR Section,
Madras High Court,
Chennai.



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P.B.BALAJI,J.

Ls

Pre-delivery order in
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