



Review Applications No.337 and 338 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2025

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C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

Review Application Nos. 337 and 338 of 2024
against

SA. 289 and 251 of 2022

1. Shankar Jagannathan

2. Sridhar Jagannathan

3. Shalini Jagannathan

Represented by their father

D.S. Jagannathan, natural guardian

for Petitioners 1 and 3 afflicted with the

mental disability Autism and Power of Attorney

Holder for Petitioner 2

... Petitioner-in-Person in both Review Applications

-Vs-

1. G. Balakrishnan

2. B. Renuka

3. B.Sathish

4. B.Sharmila

5. Mohana

... Respondents in Review Appln.No.337 of 2024

1. G.Balakrishnan

2. B. Sathish

3. B.Subramaniam

4. Maniarasu Pethi ... Respondents in Review Appln.No.338 of 2024

Prayer in Review Appln.No.337 of 2024: Review Application has



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been filed under Order 47 Rule 1 of C.P.C:

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(a) Review and set- aside the Judgment and Decree dated 11.06.2024 pronounced by this High Court in SA No.289 of 2022.

(b) Set aside the judgment and decree dated 23.09.2021 pronounced in Tirupur Principal District Court in A.S.No.4 of 2021.

(c) Award suitable compensation to be paid to the petitioners by the respondents who have been enjoying the petitioners' share of the suit properties for the past 20 years from 09.09.2005.

Prayer in Review Appln.No.338 of 2024:

(a) Review and set- aside the Judgment and Decree dated 11.06.2024 pronounced by this High Court in SA No.251 of 2022.

(b) Set aside the judgment and decree dated 23.09.2021 pronounced in Tirupur Principal District Court in A.S.No.16 of 2021.

(c) Allot 2.70 acres of the suit properties remaining after sales by the 1st plaintiff and the sales by 1st and 2nd defendants to 3rd and 4th defendants to the petitioners without seeking any relief from the 3rd and 4th defendants and the possession of the schedule “B” properties. As detailed in para 48 of the judgment, the petitioners 1 and 2 each be allotted 1/9th share in the property and the 3rd petitioner be allotted 4/9th share in the remaining extent.

For petitioner-in-person ... Mr. D. S.Jagannathan,



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in both Review Applications

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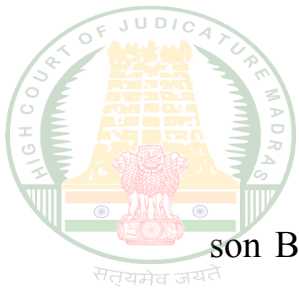
COMMON ORDER

The above review applications have been filed challenging the common judgment and decree passed in S.A.Nos.251, 289 and 552 of 2022 and S.A.No.100 of 2023 dated 11.06.2024.

2. Review Application No.337 of 2024 has been filed challenging the judgment and decree in S.A.No.289 of 2022 which emanates from the judgment and decree in O.S.No.582 of 2001 on the file of the learned Additional Subordinate Judge, Tiruppur.

3. Review Application No.338 of 2024 has been filed challenging the judgment and decree in S.A.No.251 of 2022 which emanates from the judgment and decree in O.S.No.413 of 2003 on the file of the learned Additional Subordinate Judge, Tiruppur.

4. O.S.No.582 of 2001 was filed by one L.Govindaraj against his



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son Balakrishnan and his family for partition and separate possession

of the plaintiff's ½ share in the schedule property.

5. O.S.No.413 of 2003 was filed by one Sakunthala, W/o.Govindaraj against the said Balakrishnan and his family for a declaration that she is the absolute owner of the “A” schedule property, directing the 3rd defendant to deliver the 3rd item of the “B” schedule property and to declare the sale deeds standing in the name of the defendants 3 and 4 relating to the “B” schedule property as null and void and to grant permanent injunction restraining them from interfering with her peaceful enjoyment of the “A” schedule property.

6. The facts as set out in O.S.No.582 of 2001 which form the basis of the pleading in all the suits are herein below set out and the review petitioners and the respondents are referred to in the same ranking as before the trial Court in O.S.No.582 of 2001 for the ease of understanding.

7. It is the case of the plaintiff (Govindaraj) that the property



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belonged to one Lakshminarayana Chettiar, the father of the 1st plaintiff and his brother, K.L.P.Rengasamy Chettiar. After their demise on 06.09.1963, the properties were partitioned amongst the legal representatives and the properties which had been described as “I” in the said deed fell to the share of the 1st plaintiff. The 1st defendant is the son of the 1st plaintiff and both of them were enjoying the property without partitioning the same. In the year 1970, since the Land Ceiling Act was enacted and to avoid excess lands being taken by the Government, they had devised a method whereby they could ensure the retention of their entire property. A suit O.S.No.236 of 1970 was filed for partition by the 1st plaintiff wherein a compromise was entered into and the properties were partitioned in terms of the compromise. The 1st plaintiff's case is that this partition was only on paper and was never acted upon. He would submit that after the partition, he had sold some of the properties allotted to his share and also sold some of the family properties for the welfare and benefit of the family. Thereafter, a superstructure has been put up from out of the sale proceeds from the joint family property. Some of the lands



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were also developed as agricultural lands. That apart, the 1st plaintiff was managing a bleaching factory at Angeripalayam. All of this, according to the 1st plaintiff, was being managed by him exclusively despite the compromise decree including the business.

8. It is also the case of the 1st plaintiff that they were all residing jointly in the same house as the 1st defendant and his family members (defendants 2 to 4) were residing in the first floor while the 1st plaintiff and his wife in the ground floor. Owing to certain misunderstandings which had arisen between the parties with reference to the common enjoyment of the properties, a panchayat was held. Since this did not yield the desired results, the suit O.S.No.582 of 2001 was filed.

9. The 1st defendant would contend that the suit O.S.No.236 of 1970 was instituted on the file of the District Munsif Court, Dharapuram, only on account of the fact that the 1st plaintiff was attempting to alienate the family properties, which had ended in a compromise and the parties were enjoying the properties in the manner in which it was compromised, till the year 1985. In the year 1985, the



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1st plaintiff's wife and the 1st defendant's mother, Sakunthala had filed a

suit O.S.No.215 of 1985 on the file of the Sub Court, Tiruppur against

the 1st plaintiff and the 1st defendant for partition with reference to the

“B” schedule property. This suit was also compromised and a

compromise decree had been passed. After the decree in O.S.No.215

of 1985, the 1st plaintiff did not have any rights, title or interest over

the suit properties as he had got himself impleaded as a defendant in

the suit O.S.No.215 of 1985 and sought for an amendment of the suit

schedule so as to include all the properties that had been partitioned

and allotted to his share under the decree in O.S.No.236 of 1970.

Pursuant to the compromise in O.S.No.215 of 1985, the properties

were allotted to share of the 1st defendant. The 1st defendant would

further submit that he had set up an independent residence along with

his family and was not in a joint family as contended by the 1st

plaintiff. He would further submit that he is in possession of the

properties allotted to his share through tenants and that the 1st plaintiff

is now trying to threaten and coerce the tenants into paying the rents to

him. He would also deny the contention of the plaintiff that the



misunderstanding originated recently.

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10. Pending the suit, since the 1st plaintiff (who was the sole plaintiff) had passed away, plaintiffs 2 to 4, who are the review petitioners herein. were impleaded as parties to the proceedings on the basis of a Will which is said to have been executed by the 1st plaintiff, bequeathing all his rights in the suit properties to plaintiffs 2 to 4. The 5th defendant was also impleaded in the suit for having purchased the property from the 1st plaintiff. The 5th defendant had filed a written statement contending that the 1st plaintiff was constrained to file the suit for partition only on account of the fact that the 1st defendant had neglected to take care of the plaintiff. During the pendency of the suit, on 19.10.2005, the 1st plaintiff had sold an extent of 34 ½ cents from out of the extent of 3.50 acres in G.S.No.8/A3, Thottipalayam Village to one Raghupathy within the specific boundaries. This property in turn was purchased by the 5th defendant from the said Raghupathy under a Sale Deed dated 23.01.2013. The revenue records were mutated in the name of the said Raghupathy. The 5th defendant had



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also filed a suit for declaring her title with reference to the property purchased by her in O.S.No.133 of 2013 on the file of the Principal Sub Court, Tiruppur against defendants 2 to 4. The 5th defendant sought for dismissal of the suit as against her. It appears that the suit was decreed initially and the matter was taken up on appeal in A.S.No.1 of 2007 wherein the appeal was allowed and the matter was remanded back for fresh consideration. Thereafter, the 5th defendant had filed an additional written statement in which, she had contended that prior to her purchase, she had met with the plaintiffs and defendants 2 to 4 to apprise them about her intention to purchase an extent of 34 ½ cents and had requested the right to the open well, motor pumps etc,. The 1st defendant had also undertaken to demolish a portion of the petrol bunk's roof which was protruding into the plaintiff's land. This assurance was observed in the breach. She would contend that the compromise decrees in O.S.No.236 of 1970 and O.S.No.215 of 1985 were not acted upon. She would submit that she is entitled to a partition in respect of 34 ½ cents.



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11. The plaintiffs had filed a reply to the counter affidavit contending that the 5th defendant has to work out her remedy in the suit O.S.No.133 of 2013 as she is a *pendent lite* purchaser and she has to await the result of the suit for partition.

12. The defendants 1 to 4 had filed an additional written statement in which they had questioned the validity of the Will dated 20.02.2008. According to them, the 1st plaintiff was in poor health condition, both physically as well as mentally and therefore, did not have the mental capacity to execute the Will in the year 2007. The Will, according to defendants 1 to 4, had been created under the coercion of the guardian of plaintiffs 2 to 4. Further if the Will had been really executed, it would have come to their knowledge as the suit was pending since 2001. They would contend that the original sale in favour of Raghupathy and the subsequent sale in favour of the 5th defendant were hit by principles of *lis pendens*.

13. As already stated, the suit O.S.No.413 of 2003 was filed by



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Sakunthala, the wife of the 1st plaintiff and the mother of the 1st defendant for a declaration with reference to the “A” schedule property, for delivery of the III item of the B schedule property and to declare the sale deeds in the name of defendants 3 and 4 as null and void.

14. All the 3 suits had been tried together by the trial Court. On the plaintiff's side, 3 witnesses were examined as P.Ws 1 to 3 and Exs.A1 to A45 were marked. On the side of the defendants, 7 witnesses were examined as Ex.D.Ws 1 to 7 and Exs.B1 to B101 were marked. The evidence was recorded separately in the suit O.S.No.413 of 2003 wherein the Power Agent, Jaganathan was examined as P.W.1 and Exs.A1 to A11 were marked. The 1st defendant was examined as D.W1 and Exs.B1 to B31 were marked and Court Exs.C1 to C3 were marked.

15. By a common judgment and decree dated 28.07.2020, the suit O.S.No.582 of 2001 was allowed and the trial Court had held that a physical partition had not taken place pursuant to the decrees in O.S.No.236 of 1970 and O.S.No.215 of 1985 and therefore, there was



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no question of the 1st plaintiff once again blending properties allotted to him into the joint family properties. The trial Court had further held that no properties were allotted to the 1st plaintiff and the 1st defendant under the compromise decree and further, the compromise decree had not been registered and therefore, no right would be conferred upon the plaintiff in O.S.No.194 of 2006. The decree that has been passed by the trial Court is briefly set out herein below:

“65. The decree passed:~

(a)The suit O.S.No.582 of 2001 was decreed.

(b)The plaintiffs 2 to 4 were entitled to a partition in respect of 2/3rd share in the suit schedule property for which a preliminary decree was passed.

(c)Counter claim filed by the 5th defendant in O.S.No582 of 2001 was dismissed.

(d)O.S.No.194 of 2006 was dismissed.

(e)O.S.No.413 of 2003 has been partly allowed.

(f)The 1st plaintiff, Sakunthala in O.S.No.413 of 2003 is entitled to the suit property and as she had passed



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away her legal representatives have to file an appropriate suit before the Civil Court.

(g)The sale executed by defendants 1 and 2 in O.S.No.413 of 2003, in favour of defendants 3 and 4 was invalid and do not confer any title to them.

Aggrieved by the judgment and decree in O.S.No.413 of 2003, the defendants 1 and 2 had filed A.S.No.16 of 2021. Aggrieved by the judgment and decree in O.S.No.582 of 2001, the 5th defendant had filed A.S.No.100 of 2022 and the defendants 1 to 4 had filed A.S.No.2 of 2021. The plaintiff in O.S.No.194 of 2006 had filed A.S.No.4 of 2021. A.S.Nos.4 and 16 of 2021 were allowed wherein the decree in O.S.No.582 of 2001 and O.S.No.413 of 2003 were set aside. A.S.No.2 of 2021 was allowed and the judgment in O.S.No.194 of 2006 was set aside. Against the judgment and decree in A.S.No.16 of 2021, S.A.No.251 of 2022 was filed and against the judgment and decree in A.S.No.4 of 2021, S.A.No.289 of 2022 was filed. S.A.No.100 of 2023 and S.A.No.552 of 2022 were filed against the judgment and decree in A.S.No.100 of 2020 and A.S.No.2 of 2021 respectively. Though a



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common judgment was passed in all 4 second appeals, the Review

Petitioners have not sought to challenge the decree in S.A.No.552 of 2022 and S.A.No.100 of 2023.

16. The Review petitioners namely the plaintiffs 2 to 4 in O.S.No.582 of 2001 have now filed these review applications contending that there is an error apparent on the face of the record.

17. Heard the arguments of the Petitioner (Party-In-Person) and perused the materials available on record.

18. The main ground on which these review petitions are filed is that this Court has failed to appreciate that when the compromise decree had been entered into in the year 1970, the 1st defendant was still a minor and the compromise decree is a collusive and fraudulent one; and that the review petitioners namely plaintiffs 2 to 4 had set up an independent claim as the legal heir of a co-parcener, Chandralekha who had a right to the property being the daughter of the 1st plaintiff



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and would be entitled to a share had the fraudulent partition not taken

place. Further, each ground that has been raised points out an error in

the judgment and does not state as to how the judgment and decree

suffer from an error apparent on the face of the record, warranting a

review. With reference to the ground that the compromise was entered

into when the 1st defendant was a minor, it has already been dealt with

and findings have been rendered in paragraph 106 of the judgment

under review. The review petitioners are only seeking to re-argue the

point in question. That apart, the 1st defendant, upon attaining

majority, has not questioned the compromise, therefore, the

compromise decree in O.S.No.236 of 1970 had attained finality. The

2nd compromise was entered into after the 1st plaintiff had got himself

impleaded as a defendant in the suit and had amended the plaint to

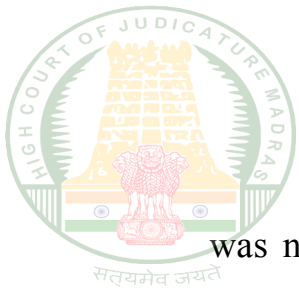
bring all the properties allotted to him under the 1970 compromise

decree into the schedule of properties in the suit O.S of the year 1985.

Thereby once again confirming the compromise decree in O.S.No.236

of 1970. The review petitioners, namely plaintiffs 2 to 4 have now

raised a plea that they are claiming under a co-parcener. Such a plea



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was not raised earlier and further, the compromise between the then co-parceners had taken place as early in the year 1970 and on such partition, the co-parcenary had come to an end. The petitioners had been impleaded only on the strength of the Will and not as legal heirs of the co-parcener. The grounds of review do not make out any error apparent on the face of the record.

19. The Hon'ble Supreme Court in the judgment reported in **2020(2) SCC 677 [Shanti Conductors Private Limited Vs Assam State Electricity Board and Others]** has held in paragraph 25 as follows:

“25.The scope of review is limited and under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions, which have already been addressed and decided. The scope of review has been reiterated by this Court from time to time. It is sufficient to refer to the judgment of this Court in Parsion Devi v. Sumitri Devi [(1997) 8 SCC 715] , wherein in para 9 the following has been laid down : (SCC p. 719)



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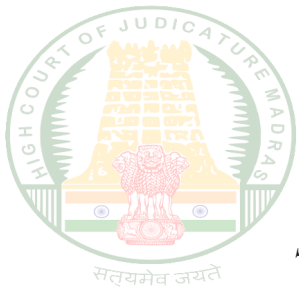


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“9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of 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 a limited purpose and cannot be allowed to be “an appeal in disguise”.

20. The Hon'ble Supreme Court in another judgment reported in **2023 (13) SCC 515 [S.Murali Sundaram Vs. Jothibai Kannan and Others]** referred to the case of **Perry Kansagra Vs.Smriti Madan Kansagra (2019) 20 SCC 753** where the validity of a judgment passed by the High Court was considered. The learned Judges had observed in paragraph 16 as follows:

“16.while exercising the review jurisdiction in an application under Order 47 Rule 1 read with



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Section 114CPC, the Review Court does not sit in appeal over its own order. It is observed that a rehearing of the matter is impermissible in law. It is further observed that review is not appeal in disguise. It is observed that power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. It is further observed that it is wholly unjustified and exhibits a tendency to rewrite a judgment by which the controversy has been finally decided.

17. After considering a catena of decisions on exercise of review powers and principles relating to exercise of review jurisdiction under Order 47 Rule 1CPC this Court had summed up as under : (Perry Kansagra case [Perry Kansagra v. Smriti Madan Kansagra, (2019) 20 SCC 753] , SCC pp. 768-69, para 15.1)

“15.1. ‘33. ... “... (i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1CPC.



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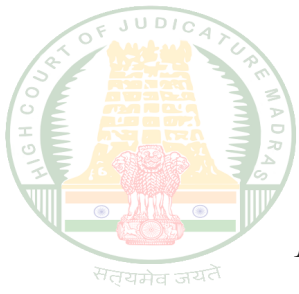
(ii) *Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.*

(iii) *Power of review may not be exercised on the ground that the decision was erroneous on merits.*

(iv) *Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.*

(v) *An application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit.”*

’ (As observed in : Inderchand Jain v. Motilal, (2009) 14 SCC 663, p. 675, para 33)”



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It is further observed in the said decision that an error which is required to be detected by a process of reasoning can hardly be said to be an error on the face of the record.

The learned Judges had further gone on to observe in paragraph 23 as follows:

“23. Even if the judgment sought to be reviewed is erroneous the same cannot be a ground to review the same in exercise of powers under Order 47 Rule 1CPC. An erroneous order may be subjected to appeal before the higher forum but cannot be a subject-matter of review under Order 47 Rule 1CPC. ”

21. Therefore, since the review petitioners have not been able to show as to how the judgment under Review suffers from an error apparent on the face of the record, the review petitions have to necessarily fail. Accordingly, these review applications are dismissed.

No costs.

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