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Rev.Appl.No.343 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.06.2025

Delivered on : 14.07.2025

CORAM:

THE HONOURABLE MR JUSTICE P.B. BALAJI

Rev.Appl.No.343 of 2024

in

S.A.No.702 of 2017

1.R.Banumathi

2.Mrs.R.Sarojini

3.R.Subramanian

... Review Petitioners

Vs.

1.K.Ganesan

2.K.Gunasekaran

3.K.Balasubramaniam

4.K.Velusamy

5. K.Vanithamani

6.Navamani

7.Santhanamani

8.R.Manimegalai

9.Loganathan

10.Tamilarasu

... Respondents



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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 18.04.2024 passed in S.A.No.702 of 2017 on the file of this Court.

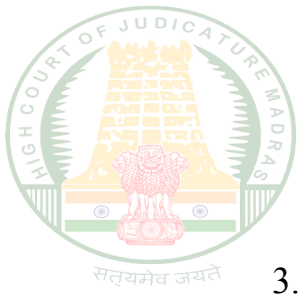
For Petitioners : Mr.S.R.Rajagopal,
Senior Counsel for
Mr.Shangar Murali

For Respondents : Mr.T.R.Rajagopalan,
Senior Counsel for
Mr.R.Siddharth for R1 to R5
and Mr.Meiyyappan Mohan
for R6 to R10

ORDER

The respondents 1 to 3 in S.A.No.702 of 2017 have filed the above review petition seeking to review my judgment and decree in S.A.No.702 of 2017 dated 18.04.2024.

2. I have heard Mr.S.R.Rajagopal, learned Senior Counsel for Mr.Shangar Murali, learned counsel for the Review Applicants and Mr.T.R.Rajagopalan, learned Senior Counsel for Mr.R.Siddharth, learned counsel for the respondent 1 to 5 and Mr.Meiyyappan Mohan, learned counsel for respondents 6 to 10.

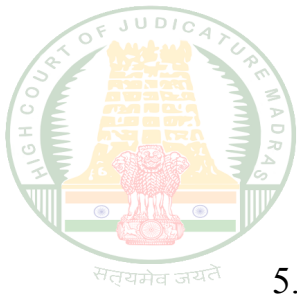


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3. The learned Senior Counsel, Mr.S.R.Rajagopal would invite my attention to the reliance placed on by me, to a decision of the Hon'ble Supreme Court in ***Saranpal Kaur Anand vs Praduman Singh Chandhok*** reported in (2022) 8 SCC 401, and drawing my specific attention to paragraph Nos.45 and 46, where I have indicated that the said decision would squarely apply to the facts of the present case, the learned counsel would contend that, though I have discussed the facts and other issues and questions of law elaborately in the earlier preceding paragraphs, the decision has been ultimately founded on the ratio laid down by the Hon'ble Supreme Court in ***Saranpal Kaur'*** case, (referred herein supra).

4. In this regard, he would invite my attention to the said decision of the Hon'ble Supreme Court and state that the decision has not attained finality and there is no binding precedent laid down in the said decision. He would refer to the concluding paragraphs of the said judgment, where two Judges of the Hon'ble Supreme Court have not been in an agreement with each other and have expressed different opinions by way of two separate judgments and the matter has only been placed before the Hon'ble Chief Justice of India for appropriate orders/ directions.

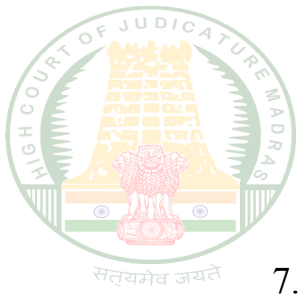


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5. The learned Senior Counsel would further state that thereafter the matter has not been taken up and therefore, the ratio laid down in the said decision could not have formed the basis of holding that the plaint cannot be thrown out at the initial stage.

6. The learned Senior Counsel would also fairly submit that my judgment in the Second Appeal was taken up on appeal before the Hon'ble Supreme Court and the SLP was also dismissed. However, he would state that it would not preclude or take away the right of the review applicants to seek review of my judgement. The learned Senior Counsel would also take me through the concurrent findings of the Courts below, which has been reversed by me in Second Appeal and contend that even if the Hon'ble Supreme Court while dismissing the SLP filed by the appellants, has granted liberty to the defendants to take recourse to all defences including limitation, he would contend that this would include the right to seek rejection of the plaint on the ground of limitation, as a suit which is barred by law can be rejected exercising powers under Order VII Rule 11(d) CPC.

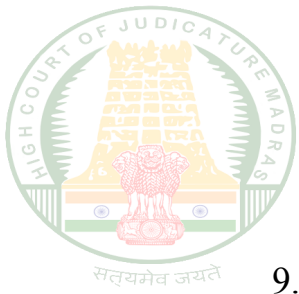


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7. The learned Senior Counsel, Mr.S.R.Rajagopal would try to impress upon me that the decision to allow the Appeal was only on the strength of the ratio laid down in *Saranpal Kaur*' case, (referred herein supra) and when it had not been brought to my notice that the said judgment has not become final and that two contrary views had been expressed by the learned Judges of the Hon'ble Supreme Court and thereafter, the matter has not been taken up and decided finally, he would submit that the judgment in the Second Appeal needs to be reviewed under Order 47 Rule 1 & 2 of CPC.

8. Per contra, Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the respondents would submit that the arguments that are now canvassed in review were all raised earlier when arguments were advanced by a different Counsel in the Second Appeal. He would also deprecate such practice of a different counsel arguing a review petition since the new counsel would not be personally aware of what was argued in the Second Appeal and it was only a waste of judicial time in re-arguing the Second Appeal, under the guise of review.



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9. The learned Senior Counsel would also submit that all the points that are raised now have been elaborately dealt with by me in the Second Appeal and from the reading of the entire judgement, he would state that the ultimate decision is not only based on the decision of the Hon'ble Supreme Court in *Saranpal Kaur's* case, (referred herein supra) and reliance has also been placed on various other decisions.

10. The learned Senior Counsel would therefore submit that the Review Application is nothing but an attempt to re-argue the Second Appeal in disguise. He would therefore pray for dismissal of the review.

11. I have carefully considered the submissions advanced by the learned Senior Counsel on either side.

12. With regard to the objection of the learned Senior Counsel Mr.T.R.Rajagopalan that arguments in Review Application by a different counsel ought not to be entertained, though in normal circumstances, if the



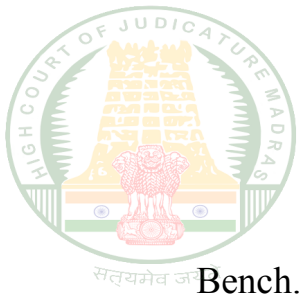
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Review is sought for on issues touching facts, I may have agreed to the submissions of the learned Senior Counsel Mr.T.R.Rajagopalan. However, in the present case the Review is sought for only on the ground of a question of law, viz., whether the decision of the Hon'ble Supreme Court that has been relied on by me was that had attained finality and thereby had no binding value. Therefore, in the light of the scope of Review which is sought for, I do not find it improper for a different Counsel to argue the Review Petition.

13. Coming to the merits of the grounds of Review, the learned Senior Counsel Mr.S.R.Rajagopal would emphasise that my decision is only based on the decision in *Saranpal Kaur's case* (referred herein supra) and therefore, on this primordial ground he seeks review.

14. In *Saranpal Kaur's case*, (referred herein supra) a split verdict was rendered by the Hon'ble Supreme Court and therefore the matter was referred to the Hon'ble Chief Justice of India for constituting a larger



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Bench. In such circumstances, the contention of the learned Senior Counsel, Mr.S.R.Rajagopal is that, the judgment in the said case cannot said to have laid down any authoritative proposition of law and no reliance could have been placed in the said decision. He further contended that the fact that the matter being referred to larger Bench was not brought to my notice at the time of arguing the Second Appeal and therefore, this discovery subsequently, entitles the petitioners to seek review. Insofar as all other grounds which are placed for Review Petition, though not seriously pressed by the learned Senior Counsel, I find that all those issues are only issues which had been elaborately dealt with by me and therefore on these grounds, I do not find the Review being maintainable and at best the grounds are only attempts to re-argue the Second Appeal in this case.

15. However, coming to the *Saranpal Kaur' case*, (referred herein *supra*) no doubt, I have discussed the ratio laid down in the said judgment and also held that the above ratio would squarely apply to the facts of the present case and therefore, the plaint cannot be thrown out at the initial stage itself. However, this decision is not the only reason for my ultimate



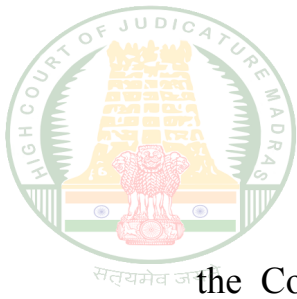
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CPC.

finding that the suit is not liable to be rejected under Order VII Rule 11

16. In paragraphs 40 to 42, I have elaborately dealt with the peculiar facts of this case and found that there was a necessity for the parties to lead oral and documentary evidence, even though the Hon'ble Supreme Court had given liberty to the defendants to raise the issue of limitation and I held that such liberty cannot be put in action by way of an Application under Order VII Rule 11 CPC.

17. In paragraphs 43 and 44, I have relied on two other decisions of the Hon'ble Supreme Court, where the Supreme Court held that when triable issues arise, the plaint cannot be rejected under Order VII Rule 11 CPC. Infact in ***Balasaria Construction (P) Ltd vs Hanuman Seva Trust and others*** reported in ***(2006) 5 SCC 658***, the Hon'ble Supreme Court has held that the suit cannot be held to be barred by limitation, since limitation is a mixed question of law and fact and on ex facie reading of the plaint,



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the Court cannot hold that the suit is barred by limitation. Even after referring to *Saranpal Kaur's case*, (referred herein supra) I have specifically adverted my attention to the liberty granted by the Hon'ble Supreme Court to the plaintiffs to file a suit for declaration of title.

18. In view of the above of the, I do not find force in the submissions of the learned Senior Counsel, Mr.S.R.Rajagopal that my decision has been only based on the decision of the Hon'able Supreme Court in *Saranpal Kaur's case (referred herein supra)* and therefore, the judgment needs to be reviewed, as I do not find any merit in this Review Application and accordingly, the same is dismissed.

14.07.2025

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



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To

1. The II Additional Sub Judge,
Coimbatore.
- 2.The Additional District Munsif,
Coimbatore.
3. The Section Officer,
VR Section, Madras High Court,
Chennai.



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P.B.BALAJI,J.

rkp

Pre-delivery order in
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