



REV.APLC(MD)No.81 of 2025

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.11.2025

PRONOUNCED ON: 28.11.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

REV.APLC(MD)No.81 of 2025

in

S.A(MD)No.318 of 2019

Thayumanavar (died)

: Nil/ Appellant

1.Mythili

2.Malathi

3.Vijayalakshmi

4.Nithyakal Kalyani

5.Kumarmurugan

: Petitioners/LRs of the sole
appellant

Vs.

1.Manikkampillai

2.N.Gayathri

: Respondents

(cause title is accepted vide Court order, dated 02.04.2025

made in CMP(MD)No.5278 of 2025 in Rev.Aplc(MD)SR No.8963/2025)



REV.APLC(MD)No.81 of 2025

PRAYER:- Review Application filed under Order XLVII Rule 1 and Section 114 of the Code of Civil Procedure, to review the decree and judgment, dated 29.07.2024 made in S.A(MD)No.318 of 2019.

For Petitioners :Mr.K.Prabhakar

For Respondents : No Appearance.

ORDER

The Review Application is directed against the judgment made in S.A(MD)No.318 of 2019, dated 29.07.2024 on the file of this Court, which is directed against the judgment and decree passed in A.S.No.3 of 2018, dated 11.09.2018 on the file of the Principal District Court, Tiruchirappalli, modifying the judgment and decree made in O.S.No.115 of 2016 on the file of the Subordinate Court, Thuraiyur.

2. Originally, the plaintiff filed a suit in O.S.No.522 of 2012 (O.S.No.115 of 2016) on the file of the Sub Court, Thuraiyur, claiming the relief of specific performance of the agreement of sale dated 29.03.2012 or in the alternative to refund a sum of Rs.5,00,000/- with interest and costs. The first defendant filed a written statement admitting the case of the plaintiff. The



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second defendant filed a written statement disputing the case of the plaintiff.

After full trial, the learned Subordinate Judge passed the judgment and decree, dated 30.10.2017, dismissing the suit with regard to the relief of specific performance of sale agreement, but decreed the suit, directing the first defendant to refund the amount of Rs.5 lakhs with interest and costs. Aggrieved by the said judgment and decree, the plaintiff preferred the appeal in A.S.No.3 of 2018 on the file of the learned Principal District Judge, Tiruchirappalli.

3. The learned Principal District Judge, Tiruchirappalli, upon considering the materials available on record and on hearing the arguments of both the sides, passed the judgment and decree, dated 11.09.2018, confirming the dismissal of the suit with regard to the relief of specific performance, but modified the judgment and decree of the trial Court to the effect, by directing the second defendant to pay the advance amount of Rs.5 lakhs with interest and costs.

4. Challenging the said judgment and decree passed by the learned first appellate Judge, the plaintiff preferred the second appeal in S.A(MD)No.318 of 2019. The respondents in the second appeal, who are the defendants,



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despite receipt of notice had not turned up. This Court upon hearing the arguments of the appellant side and on perusing the materials available on record passed the impugned judgment, dated 29.07.2024, allowing the second appeal and thereby setting aside the judgment and decree passed by the first appellate Court and decreed the suit granting the relief of specific performance of the sale agreement, dated 29.03.2012 and directed the plaintiff to deposit Rs.2 lakhs with interest at the rate of 6% per annum from the date of the suit till the date of deposit before the trial Court within a period of one month from the date of receipt of a copy of the judgment and on such payment / deposit, the respondents/defendants are directed to execute the sale deed in favour of the plaintiff within a period of one month from the date of payment / deposit. If deposit already made, within a period of one month from the date of receipt of a copy of the said judgment.

5. In the review application also, despite receipt of Court notice, the respondents have not turned up.

6. The case of the review applicants is that during pendency of the second appeal, the review applicants' father/plaintiff died on 09.11.2023; that their mother predeceased their father, who had died in the year 2008 itself and



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that their father is survived by the review applicants; that since their father was personally handling the case, they had no knowledge of it; that they came to know when their counsel had addressed a letter to their father at the time of final hearing, but the letter is not traceable; that the said counsel had written another letter to their father after the judgment was pronounced and only thereafter, they came to know that the matter had been finally disposed of; that they could not take steps to inform the Court about their father demise at the appropriate time and hence, steps could not be taken to implead them in the matter; that the petitioners are advised that unless the judgment and decree reflects the applicants as parties, the decree would be inexecutable and that therefore, they are constrained to file the present review petition.

7. The learned counsel for the review petitioner would submit that the review jurisdiction of this Court can be invoked with the new and important fact, which could not be produced at the time of making decree or for sufficient reasons, which in exercise this Court deems fit; that when this Court had decreed the second appeal, the sole appellant had already died, which fact was not apprised to this Court; that a decree in favour of a dead person is not void and that therefore, the non-inclusion of the legal representatives of the deceased appellant can be rectified only by way of a review, which is sufficient reason to entertain the present review application.



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8. It is evident from the records that the appellant, who filed the second appeal died on 09.11.2023 and this Court passed the impugned judgment and decree in the second appeal on 29.07.2024. According to the review petitioners, after receiving the letter from their counsel, they came to know that the second appeal was allowed in favour of their father and that his death was not reported to the Court and hence, steps for impleading the legal representatives of the deceased appellant were not taken.

9. No doubt, the review petition can be filed against the judgment passed in second appeal, but it is a limited remedy with strict grounds for filing under Order 47 Rule 1 of C.P.C., which allows for correction of errors apparent on the face of the record, discovery of new and important evidence or other sufficient reasons. A review may be allowed, if new and important evidence, not within applicants' knowledge or that could not have been procured with due diligence, comes to light and can also be filed, if there is any other sufficient reason.

10. In the present case, when the appeal was heard, the factum of the death of the appellant was not brought to the notice of the counsel on record



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and consequently to the Court. Since the death was not reported, this Court passed the impugned judgment and decree as if the appellant was alive.

11. The learned counsel for the review petitioners would rely on a decision of this Court in ***Abdul Azeez Sahib Vs. Dhanabagiammal and others*** reported in AIR 1983 Mad 5, wherein this Court referring to the earlier decisions, has held that a decree passed in favour of a death person is not a nullity and the relevant portions are extracted herein :

“ 3.The learned counsel for the petitioner relying on the two decisions reported in Himangshu Bhusan Kar v. Manindra Mohan Baha, AIR 1954 Cal 205 and Raddulal Bhurmal v. Mahabirprasad Bisesar Kalwar, AIR 1959 Bom 384, contended that a decree passed in favour of a dead person is not a nullity, and the fact of death not brought to the notice of the Court when it passed the decree is only an irregularity and it cannot have the effect of making the decree void ab initio and the decree is executable. Where the Court proceeds with the case in ignorance of the fact of death of a person and passes a decree, that decree cannot be treated as a nullity. It may, no doubt, be a wrong decree, but it will have to be set aside by taking appropriate proceedings like appeal, revision or review. Generally speaking, a decree passed in favour of a dead person is not a nullity, though a decree passed against a dead person can be construed as a nullity. Even if there



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is abatement of the suit, that would not make the decree passed in the suit as one without jurisdiction and the executing Court is not entitled to refuse to execute the decree on the ground that the plaintiff was not alive on the date when the decree was passed in his favour.

.....

5. As the decree passed in ignorance of the death of the plaintiff is a mere irregularity and cannot have the effect of making the decree as one without jurisdiction, the lower appellate Court's finding that the decree is void ab initio is clearly erroneous.”

12. Considering the legal position above referred, as rightly contended by the learned counsel for the revision petitioner, the judgment and decree passed in the second appeal in favour of the deceased appellant cannot be considered as a nullity and it can only be termed as irregular. Since the death of the appellant is now brought to the notice of this Court, this Court can very well invoke the review jurisdiction. Hence, this Court is inclined to allow the review application.

13. Admittedly, in the second appeal, despite the death of the appellant, his legal representatives were not brought on record. The learned counsel for



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the review petitioners would submit that the decree as it stands now cannot be executed as the decree holder is not alive.

14. As already pointed out, despite the receipt of notice, the respondents have not turned up. According to the review petitioners, they are the daughters and son of the deceased appellant Thayumanavar and the learned counsel for the review petitioners would submit that no other legal representative is left out.

15. Considering the facts and circumstances of the case, this Court is of the view that the review petitioners are to be impleaded as the legal representatives of the deceased appellant and the judgment and decree of this Court in second appeal are ordered to be modified accordingly.

28.11.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
das



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K.MURALI SHANKAR,J.

DAS

To

- 1.The Principal District Judge, Tiruchirappalli.
- 2.The Subordinate Judge, Thuraiyur.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

PRE-DELIVERY JUDGMENT MADE IN
REV.APLC(MD)No.81 of 2025
in S.A(MD)No.318 of 2019

28.11.2025