



W.P.(MD)No.2401 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.11.2025

CORAM

THE HONOURABLE **MRS.JUSTICE R.KALAIMATHI**

Rev.Aplc(MD)No.204 of 2025

and

C.M.P.(MD)No.14667 of 2025

Esther Obed
D/o.Philip Jeyasingh
rep.by her power agent,
Philip Jeyasingh

...Review Applicant

vs.

Kavitha Eswaran

... Respondent

PRAYER: This Review Application is filed under Order XLVII, Rule 1 & 2 read with Section and Section 114 of C.P.C.,to review the Order passed dated 26.02.2025 of this Court made in CMA.(MD)No.1729 of 2024.

For Applicant : Mr.N.Dhilipkumar

ORDER

The applicant /respondent/defendant has filed this review application against the Judgment and Decree dated 26.02.2025 passed



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in CMA.(MD) No.1729 of 2024.

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2. The parties are indicated herein as per their litigative status and ranking made before the Trial Court.

3. According to the plaintiff, the suit was filed in O.S.No.69 of 2023 before the II Additional District Court, Thoothukudi by Kavitha Eswaran w/o.Eswaran Bhaskar of Saligramam against one Esther Obed D/o.Philip Jeyasingh, for the relief of specific performance or in alternate for return of advance amount of Rs.56,19,110/-. The suit property is comprised in S.No.775/1 for an extent of 0.98 cents and in S.No.978/1 for an extent of acres 3.71 cents in Kattrimangalam, Village of Sathankulam Taluk, Thoothukudi , totalling 4.96 acres with buildings (Factory Hall ACC Sheet , 564.88 sq.mtr) with machineries.

4. Before the Trial Court, the plaintiff filed an application in I.A.No. 2 of 2023 under Order XXIX Rule 1 of C.P.C.for grant of interim injunction restraining the respondent/defendant from alienating the suit property till the disposal of the suit. Whereas, the respondent/defendant would contend that the petitioner obtained the signature of the respondent in the Sale Agreement on the representation that the same



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is required to be shown to the persons in abroad, who financed the business.

5. It is learnt that the defendant has been running a factory in the name and style of M/s.Ebe Liza Enterprises. The trial Court after hearing both sides, held that even if the respondent is going to alienate the property, it would be subject to the provisions of Section 52 of Transfer of Property Act, 1882 and dismissed the petition.

6. Against the said Order dated 16.10.2024 passed in I.A.No.2 of 2023 in O.S.No.69 of 2023, the plaintiff / respondent herein preferred appeal in CMA.(MD)No.1729 of 2024 before this Court.

7. Upon consideration of case records and after hearing both sides, The observations of this Court in CMA.(MD)No.1729 of 2024 are given hereunder:

“10. Section 52 of the Transfer of Properties Act (TP Act), 1882 provides protection to the parties from transfers pendente lite, in as much as it makes such transfers subservient to the decree that may be passed in the suit, but it does not come in the way of passing an order of temporary injunction restraining alienation of the suit property during the pendency of the suit on the applicant satisfying all the three ingredients of prima facie, balance of convenience and causing irreparable loss or injury in her favour.



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11. The distinction between Section 52 of the TP Act and Order 39 Rule 1 and 2 CPC is that an order of temporary injunction is of preemptive nature restraining the act of alienation by party to the suit,

where there is such a danger. But, Section 52 of the TP Act comes into play after the alienation takes place during the pendency of the suit. Section 52 provides for the consequences of a transfer taking place pending litigation. To establish the *prima facie*, the apprehension of the petitioner upon the respondent/defendant is suffice. If the respondent/defendant enters into any agreement or sale in respect to the suit property, then the petitioner/plaintiff is put to trouble. By way of abundant caution, the petitioner/plaintiff has taken out an application for an order of interim injunction not to alienate the suit property to the third parties as against the respondent/defendant. Definitely for trial, it will take some time.”

8. Upon consideration of the above said details and after hearing the elaborate arguments advanced by the learned counsel for both sides, this Court has allowed the Civil Miscellaneous Appeal by setting aside the order of the learned Trial Judge passed in I.A.No.2 of 2023 with a direction to the Trial Court to conclude the trial preferably within a period of eight months from the date of receipt of this Judgment.

9. The learned counsel for the review applicant strenuously argued that there is an error apparent on the face of the record in so far as the order sought to be reviewed.



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10. A review is not an appeal in disguise. Mere fact that different views on the same subject are possible, is not a ground to review an earlier Judgment . The power of review can be exercised for correcting the mistake and not to substitute a view.

11. A review court can never sit as an Appellate Court. Mere possibility of two views is not at all a ground for review. As the review Court cannot sit as an Appellate Court and there is no error apparent on the face of the record. Therefore, this review application stands dismissed at the admission stage itself. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

27.11.2025

Index : Yes/No
Speaking / Non-speaking order
kkd

To

II Additional District Court,
Thoothukudi.

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R.KALAIMATHI, J.,

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