



REV.APLC (MD) No.118 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.04.2025

C O R A M

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**REV.APLC(MD)No.118 of 2022
in CRP(MD)No.1506 of 2022
and
CMP(MD)No.7386 of 2022**

1.Arulmigu Umaiyammal Thirukovil,
represented by and on behalf of Vishwakarma
Community People at Virusampatti and Soorangudi Village,
Vilathikulam Taluk, Tuticorin District,
represented by its Hereditary Trustee
L.K.Pichaimani Asari

2.K.Vilayutham

... Review Applicants/
Petitioners/

Vs.

1.Anand Prakash Nadar

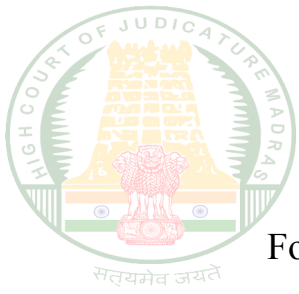
2.Paldurai

3.Amala Jothi Victoria

4.Francis Victoria

.... Respondents/
Respondents

PRAYER: Review Application is filed under Section 114 and Order XLVII Rule 1 of the Code of Civil Procedure, 1908, to review the order passed in CRP(MD) No.1506 of 2019 dated 27.06.2022 on the file of this Court by allowing this review application.



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For Review Applicant : Ms.Jessi Jeeva Priya

For Respondent : Mr.R.Devaraj

No.1

For Respondent : No representation

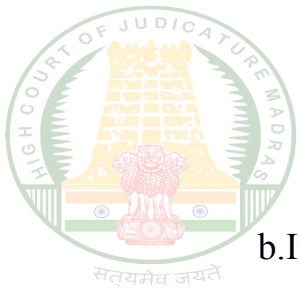
No.2

ORDER

This application is filed to review the order dated 27.06.2022 passed in CRP(MD) No.1506 of 2019 which was filed as against the order passed in IA.No.92 of 2017 in OS.No.46 of 2013 on the file of the Sub Court, Kovilpatti.

2.The scope of review application is very limited that there has to be sufficient reason provided before this court in order to entrain the review application, in view of the following decisions:

a.In *Lily Thomas v.Union of India*, AIR 2000 SC 1650, the Hon'ble Supreme Court has held that the 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. The review cannot be treated like an appeal in disguise.



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b.In the case of **Patel Narshi Thakershi vs. Pradyumansinghji**

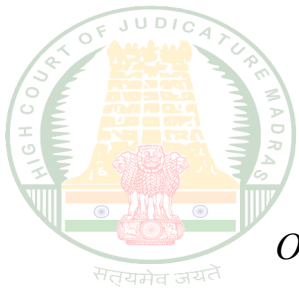
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Arjunsinghji, (1971) 3 SCC 844, the Hon'ble Supreme Court has held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise.

c.What can be said to be an error apparent on the face of the proceedings has been dealt with and considered by the Hon'ble Supreme Court in the case of **T.C. Basappa vs. T.Nagappa, AIR 1954 SC 440** held that such an error is an error which is a patent error and not a mere wrong decision.

3. Very recently, a Division Bench of the Hon'ble Supreme Court in State of **Telangana and Others v. Mohd. Abdul Qasin (Died) Per Legal Representatives [(2024) 6 SCC 461]**, has reiterated the power and scope of review. The relevant portions are extracted as under:

“24. Section 114 read with Order 47 Rule 1 CPC, 1908 is verbatim similar to Section 623 CPC, 1877, except for the Explanation to Order 47 Rule 1 which was added by way of an amendment in the year 1976. Section 114 CPC, 1908 speaks of the circumstances, instances and situations under which a review can be filed. The words “as it thinks fit” cannot be interpreted to mean anything beyond what is conferred under



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Order 47 Rule 1. In other words, Section 114 has to be read along with Order 47 Rule 1. While they are to be read together, Section 114 is more procedural, whereas Order 47 Rule 1 is substantially substantive.

25. The words “due diligence”, though one of fact, places onus on the now who seeks review.....

26. Mistake or error apparent on the face of record would debar the court from acting as an appellate court in disguise, by indulging in a re-hearing. A decision, however erroneous, can never be a factor for review, but can only be corrected in appeal. Such a mistake or error should be self-evident on the face of record. The error should be grave enough to be identified on a mere cursory look, and an omission so glaring that it requires interference in the form of a review. Being a creature of the statute, there is absolutely no room for a fresh hearing. The court has got no role to involve itself in the process of adjudication for a second time. Instead, it has to merely examine the existence of an apparent mistake or error. Even when two views are possible, the court shall not indulge itself by going into the merits.

27. The material produced, at this stage, should be of such pristine quality which, if taken into consideration, would have the logical effect of reversing the judgment. Order 47 Rule 1CPC, 1908 indicates that power of review can be exercised by courts, in three different situations, but these occasions ought to be read in an analogous manner. In other words, they should be



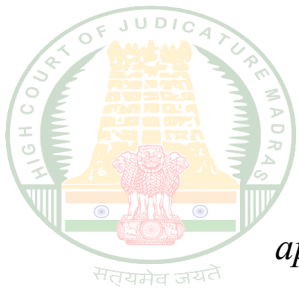
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read in a manner to mean that a restrictive power has been conferred upon the court. As stated, the words “for any other sufficient reason” ought to be read in conjunction with the earlier two categories reiterating the scope. Being a judicial discretion, it has to be exercised with circumspection and on rare occasions. It is a power to be exercised by way of an exception, subject to the rigorous of the provision.”

4.The review applicant is the plaintiff in OS.No.46 of 2013 on the file of the Sub Court, Kovilpatti. He filed an interlocutory application in IA.No.92 of 2017 under Order XXVI Rule 9 of Civil Procedure Code for appointment of Advocate Commissioner to note down the physical features of the suit schedule property and it was dismissed by the trial Court by order dated 24.07.2019. As against the same, this review applicant / plaintiff had filed a civil revision petition in CRP(MD)No.1506 of 2019 and it was disposed by this court by order dated 27.06.2022 as under:

“7.Under such circumstances, this Court is of the opinion that appointment of Advocate Commissioner to a property which is not the suit schedule property cannot be made and as such, the trial Court has rightly rejected the same. Therefore, this Court is not inclined to interfere with the impugned order and this civil revision petition is accordingly dismissed. The petitioners are at liberty to file necessary



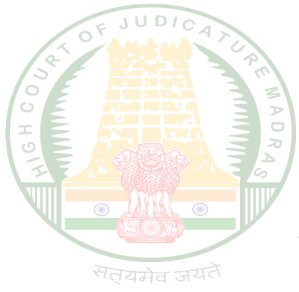
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application for amending the plaint and thereafter, for appointment of Advocate Commissioner, if they are so advised. If any such application is filed, the trial Court shall endeavor to dispose of the same within a period of six weeks from the date of filing. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.”

5.The learned Counsel on either submit that this review application is filed on the ground that even prior to the disposal of the civil revision petition on 27.06.2022, an interlocutory application in IA.No.423 of 2019 to amend the plaint was filed on 09.08.2019, it was allowed on 31.03.2021 and the amended plaint was also filed on 22.04.2021. However it was not brought to the notice of this Court at the time of disposal of the civil revision petition.

6.This Court while disposing the civil revision petition has granted liberty enabling the plaintiff to file an application for amendment of plaint and thereafter to file an application for appointment of advocate commissioner. In the event the plaint had already been amended, liberty is always there to file a fresh application for appointment of advocate commissioner before the court concerned.



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7.This Court does not find any error apparent in the order passed in civil revision petition dated 27.06.2022. Accordingly, this review application is dismissed. No costs. Consequently connected miscellaneous petition is closed.

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DSK

Internet : yes/No

To

The Sub Judge, Kovilpatti



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B.PUGALENDHI, J

DSK

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