
(2015) 04 MAD CK 0191

In the Madras High Court

Case No : Review Application (MD) No. 16 of 2015 and M.P.(MD) No. 1 of 2015

A. Sulthankhan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1(a), Order 39 Rule 1(c), Order 47 Rule 1

Citation : (2015) 04 MAD CK 0191

Hon'ble Judges : V.M. Velumani, J

Bench : Single Bench

Advocate : S.N. Amarnath, for the Appellant; M. Murugan, Government Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.M. Velumani, J.—This Review Application has been filed by the petitioner seeking to review the order dated 19.08.2014, made in C.R.P.(MD) No. 1032 of 2014.

2. The petitioner filed an application in I.A. No. 65 of 2013 in O.S. No. 79 of 2013 on the file of Principal District Munsif Court, Tiruchirappalli, for temporary injunction restraining the respondents from in any way interfering with the petitioner's peaceful possession and enjoyment of the suit property either by constructing 320 tenements over the property or otherwise till the disposal of the writ petition in W.P. No. 10761 of 2012. The said I.A. was dismissed by the learned Principal District Munsif, Trichy, on 19.03.2014. Against the said order of dismissal, the petitioner has filed C.R.P.(MD) No. 1032 of 2014.

3. After hearing the arguments of the learned counsel appearing for the parties, this Court dismissed the said Civil Revision Petition on 19.08.2014. Against the said order of dismissal, the petitioner has filed the present Review Application.

4. The petitioner has raised the following the grounds:

"(a) The suit is for permanent injunction pending disposal of W.P. No. 10761 of 2012 before the Principal Bench of this Court and I.A. for temporary injunction pending suit. Hence, the question of title and ownership does not arise.

(b) In the C.R.P., it was held that the petitioner failed to prove possession and ownership. Order 39 Rule 1(a) of C.P.C., does not contemplate to prove the ownership or title, but only must prove the wastage, damage or alienation by any party. It is not possible for the petitioner to prove possession by entire property.

(c) 1595 is Saka Year. Adding 78 years to Saka Year 1595, the English year will be 1673 and it fits to the period of Rani Mangammal.

(d) The land in question is not Inam land. It was a sale consideration for 700 Horses purchased by Rani Mangammal, as evidenced by Ex. P8, Copper Plate.

(e) The title to the suit property was proved by the petitioner's grandfather in O.P. No. 48 of 1962 and O.S. No. 39 of 1963. Exs. R1 to R10 are all dated after 08.10.2010, in which, it was stated that the property is Government Poramboke land. No document was filed to show from when the property was declared as Government Poramboke land.

(f) The second respondent stated that the Tenements are constructed in T.S. No. 11. Subsequently, the second respondent has stated that the constructions are put up in part of T.S. No. 9. The Commissioner's report states that there is no T.S. No. 11. The second respondent misguided the Court and suppressed certain documents.

(g) Exs. R12 to R426, Ration Cards and I.D. Cards, are of the year 2005. Therefore, the conclusion that those persons were in possession of the suit property for 50 years is not correct.

(h) Portion of order that the petitioner has not substantiated his claim as owner of property, is unwarranted due to pendency of the writ petition."

5. I have heard the learned counsel appearing for the parties and considered the arguments put forth by them and the contentions raised in the grounds.

6. The contentions and grounds raised in the review petition were already raised by the petitioner in the C.R.P. These contentions were already considered and rejected by an order of this Court, dated 19.08.2014.

7. In respect of the relief sought for by the petitioner in I.A. No. 65 of 2013 in O.S. No. 79 of 2013 and only Order 39 Rule 1(c) C.P.C. is applicable. The contention of the learned counsel for the petitioner that only Order 39 Rule 1(a) C.P.C. is applicable, is untenable and unsustainable.

8. It is well settled that the scope of review is very limited. The petitioner cannot re-argue and he is not entitled for re-hearing on merits or it is not in the nature of appeal only an error which had crept in the earlier order can be remedied by

way of review.

9. The scope of review was considered by the Hon"ble Apex Court in a judgment reported in Lily Thomas, Vs. Union of India and Others, AIR 2000 SC 1650 : (2000) CriLJ 2433 : (2000) 2 DMC 1 : (2000) 5 JT 617 : (2000) 4 SCALE 176 : (2000) 6 SCC 224 : (2000) 2 UJ 1113 : (2000) AIRSCW 1760 : (2000) 3 Supreme 601 , wherein, in paragraph 52, it was held as under:

"52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, AIR 1970 SC 1273 : (1971) 3 SCC 844 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. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error....."

(emphasis supplied)

10. A Division Bench of this Court in a judgment reported in 2014 (3) TLNJ 245 (Civil) [M. Jai Kavitha v. The Authorised Officer, Syndicate Bank, Regional Office, Chennai - 1 and others], has considered the scope of judicial review, wherein the decision of the Honourable Apex Court was noted with approval. Paragraph No. 9 of the said Judgment reads as under:

"9. The power of review under Order 47 Rule 1 of CPC can be exercised by a court of law, if the order in question comprises a mistake or an error apparent on the face of record. Once an order is pronounced, it should not be altered, unless there is an apparent error. Law is well settled that erroneous finding is not a ground for review, so also improper consideration for that matter. In review application, the court does not sit in appeal over its own judgment and the said application cannot be treated as an appeal. This position has been ruled by the Supreme Court in Lily Thomas, Vs. Union of India and Others, AIR 2000 SC 1650 : (2000) CriLJ 2433 : (2000) 2 DMC 1 : (2000) 5 JT 617 : (2000) 4 SCALE 176 : (2000) 6 SCC 224 : (2000) 2 UJ 1113 : (2000) AIRSCW 1760 : (2000) 3 Supreme 601 . Therefore, in the absence of any error apparent on the face of record, we are not inclined to interfere with the order in question, except to the extent of deleting of the portions in paragraphs 14 and 15 of the impugned order, with which the applicant is concerned as to having an impact on the proceedings pending before the tribunal, as stated in the foregoing paragraph."

(emphasis supplied)

11. The above two decisions were also followed in Review Application (MD) No. 142 of 2014, dated 25.11.2014, in which, I was a party, wherein it has been held that a person in review is not entitled for re-hearing of the issue.

12. In the light of the dicta laid down by the Honourable Apex Court as well as by the Division Benches of this Court, I am of the considered view that the earlier order of the Court can be reconsidered, only if there is an error apparent on the face of the record and in that event, the said error can be rectified, otherwise, a Review Application is not at all maintainable. In the present case on hand, the petitioner failed to raise any ground, reason or cause, warranting interference at the hands of this Court.

13. Therefore, I do not find any error apparent on the face of record in the order, dated 19.08.2014 passed by this Court in C.R.P.(MD) No. 1032 of 2014. Accordingly, the Review Application fails.

14. In the result, the Review Application is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.