
(2011) 04 MAD CK 0366

In the Madras High Court

Case No : Review Application No. 106 of 2003 and C.M.P. No. 14807 of 2003

Krishnan

APPELLANT

Vs

G. Joseph and Others

RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Registration Act, 1908 — Section 17(2), 49

Citation : (2011) 04 MAD CK 0366

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Advocate : Muthumani Doraisami for Doraisami, for the Appellant; T.S. Baskaran, for R1 to R3 and R5, for the Respondent

Final Decision : Dismissed

Judgement

R. Subbiah, J.—The present Review application has been filed for reviewing the judgment delivered by this Court dated 28.01.2003 in S.A. No. 1642 of 2003, whereby the second appeal filed by the Respondents herein was allowed.

2. The short facts of the case, which are necessary for disposal of the review application, are as follows:

(a) The Respondents herein are the Plaintiffs and the review applicant is the Defendant before the trial court and the Plaintiffs filed a suit in O.S. No. 396 of 1989 before the District Munsif Court, Cuddalore for a permanent injunction restraining the Defendant from interfering with the Plaintiffs' right of passage through Schedule-I by walk, cycle, rickshaw, auto-rickshaw, cart, etc., and also for recovery of possession of Schedule-II free of encroachment. The Plaintiffs are the residents of Gnanapragasam Colony, Cuddalore, which was originally belonged to Pattu Padayachi, and it was a dry land and the same was converted into plots and sold to different persons. The Plaintiffs and the Respondent's vendor one Anthony are the purchasers of the said plots and they raised constructions. All these plots abutting the main road and each plot has direct

access to the main road. Apart from that, there is a side road on the southern side of these plots. Some of the purchasers left out 15 feet on the rear side of their respective plots, so that they can have access to the side road, which situated in the southern side of the plots. For this purpose, all the purchasers entered into an agreement to leave a lane to run north-south with a width of 13 feet on the rear side and the same was reduced to writing on 19.11.1970. Subsequently, when the common enjoyment of the said lane was objected to by some of the purchasers, a suit in O.S. No. 1543 of 1973 was filed before the District Munsif Court, Cuddalore for declaration of the right of use of the said lane as a common passage by seven persons, who purchased the property. In the said suit, a compromise was entered into between the parties and the same was filed in the Court and the said suit was decreed in terms of the compromise memo. The Defendant is a subsequent purchaser of the plot from one Anthony, one of the original purchasers, who is also a signatory both in the agreement as well as the compromise memo. The Defendant has not agreed for the usage of common lane and moreover, he made an encroachment to an extent of 6-1/2 feet east and 35 feet south-north in the lane. Hence, the Plaintiffs filed the suit for there liefs stated supra.

(b) The Defendant filed a written statement stating that he is not aware of the arrangement as well as the compromise decree and he is not a party to the same and he has also denied the encroachment as alleged in the plaint.

(c) The trial court after framing necessary issues and perusing the evidence oral and documentary, decreed the suit and the Defendant filed an appeal before the Sub Court, Cuddalore, wherein the appeal was allowed and aggrieved over the same, the Plaintiffs filed the second appeal before this Court and this Court has allowed the second appeal and restored the decree and judgment of the trial court. The said judgment is sought to be reviewed in this revision application.

3. Learned Senior Counsel for the applicant/Defendant would submit that this Court has allowed the appeal based on the compromise decree and also the agreement entered into between the parties for leaving a space on the rear side to have a pathway and in the compromise decree, the value of the right to use the common pathway was fixed at Rs.100/-and as such, the compromise decree required to be registered u/s 17(2) of the Registration Act and since it was not registered, the compromise decree is inadmissible in evidence u/s 49 of the Registration Act. But this Court, by taking into consideration the agreement and the compromise decree, set aside the decree and judgment of the lower appellate court.

4. The learned senior counsel for the applicant further submitted that since the compromise decree was not registered, the same cannot be looked into and the judgment rendered by this Court is against the principles laid down by the Hon"ble Apex Court in the judgment reported in Bhoop Singh Vs. Ram Singh Major and others, and, as such, the same has to be reviewed.

5. Combating the arguments advanced by the learned senior counsel for the applicant, the learned Counsel for the Respondents/Plaintiffs would submit that the said argument was never raised in the pleadings or in the course of evidence. The parties had entered into the agreement in 1970 and pursuant to the said agreement, a lane was left out in the rear side and for several years, the purchasers are enjoying the same. Moreover, the vendor of the revision Petitioner was also a party to the agreement and even in the sale deed executed in favour of the applicant by his vendor, the rear portion was referred to as the common pathway. Therefore, no infirmity could be found in the judgment rendered by this Court. Moreover, there is no error apparent on the face of the record and under such circumstances, the review application is liable to be dismissed. In support of his contentions, the learned counsel has relied on the judgments reported in the case of Parison Devi v. Sumitra Devi 1998 (I) CTC 25, L. Jegannath and J. Thulasidaran Vs. The Land Acquisition Officer and Revenue Divisional Officer and Others, and Rajeswari and Parameswari Vs. Sri Bhuvaneswari Cycle Mart, .

6. After hearing both sides and after scrutinising the available materials, I find that the main grievance of the review applicant is that while allowing the second appeal, this Court has placed reliance on the agreement and the compromise memo entered into between the purchasers to use the rear side as the common lane; that in the compromise decree, the value conferred on the usage of the right of the immovable property, namely, the lane, was fixed at Rs. 100/- and since the value was fixed at Rs. 100/- it required to be registered and since the compromise decree was not registered, the document cannot be looked into; but this Court, by giving much importance to the compromise decree, has allowed the appeal, which is against the dictum laid down in AIR 1996 SC 196 (supra). There is no dispute about the proposition laid down in the said decision.

7. But, it is to be noted here that this defence was never raised by the applicant either in his written statement or during the course of evidence or during the time of arguments in the second appeal. Moreover, as contended by the learned Counsel for the Respondents, the vendor of the review applicant was a party to the compromise decree and even in the sale deed executed by him in favour of the review applicant, the property in question was referred to as only the common lane. Under such circumstances, I do not find any scope for allowing this review application. Assuming that there is any error in the judgment, such error can be discovered only by entering upon a long drawn process of reasoning, which is not contemplated in the review application. In other words, there is no error of law or even of fact apparent on the face of record, requiring review of such judgment.

8. In this regard, a useful reference could be placed in the decisions relied on by the learned Counsel for the Respondents. In 1998(I) CTC 25 (supra), the Hon'ble Apex Court has observed as follows: "9. Under Order 47, Rule 1, CPC a judgment may be open to review inter alia if there is a mistake or an error

apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47, Rule 1, CPC. In exercise of the jurisdiction under Order 47, Rule 1, CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

9. In *Rajeswari and Parameswari Vs. Sri Bhuvaneswari Cycle Mart*, , this Court has held as follows:

15. On the facts and circumstances of the case, I can come to irresistible conclusion that, where without any elaborate argument or long-drawn process of reasoning, one could point out the error and say that there is a substantial point of law which stares one in the face and there could reasonably be no two opinions entertained about it, a clear case of an error apparent on the face of record is made out. There cannot be reappraisal of the entire matter or evidence on record for finding the error. If there is reappraisal, it would amount to exercise of appellate jurisdiction, which is not permissible in the Application for Review.

10. In *L. Jegannath and J. Thulasidaran Vs. The Land Acquisition Officer and Revenue Divisional Officer and Others*, , a Division Bench of this Court has stated as follows:

11. But in the case on hand it is not the case of the Review Applicants that documents placed before the Division Bench by them was not considered by the Division Bench. In our considered view, the facts of the case in *Rajender Singh Vs. Lt. Governor, Andaman and Nicobar Islands and Others*, and the facts of the case on hand are totally different. Therefore in our considered view the said decision is not applicable to the facts of this case. As far as the decision reported in AIR 2000 S.C. 1650 is concerned, it is rather in favour of the contesting Respondents than the Review Applicants. In this decision, the Honourable Supreme Court has held that Review is also not an appeal in disguise and Review cannot be treated as an appeal in disguise. It has been further held that the power of Review can be exercised for correction of a mistake and not to substitute a view and mere possibilities of two views on the subject is not a ground for Review. In Paragraph 57 of the said judgment, it has been observed and held as follows:

It is not the case of the Petitioners that they have discovered any new and important matter which after the exercise of due diligence was not within their knowledge or could not be brought to the notice of the Court at the time of passing of the judgment. All pleas raised before us were in fact addressed for and on behalf of the Petitioners before the Bench which, after considering those pleas, passed the judgment in *Sarla Mudgal's* case. We have also not found any mistake or error apparent on the face of the record requiring a review. Error contemplated under the rule must be such which is apparent on the face of the

record and not an error which is to be fished out and searched. It must be an error of inadvertence. No such error has been pointed out by the learned Counsel appearing for the parties seeking review of the judgment.

12. If we consider the case on hand, in the light of the above, we can see that in this case also it is not the case of the Review Applicants that they have discovered any new and important point which after the exercise of due diligence was not within their knowledge or could not be brought to the notice of the Court at the time of passing of the orders in the impleading petitions. In this case, all pleas raised before us were not in fact addressed before the Division Bench. As pointed out by the Honourable Supreme Court of India, error contemplated under Order 47 Rule 1 must be such which is apparent on the face of the record and not an error which is to be fished out and searched. It must be an error of inadvertence. In our considered view, no such error has been pointed out by the Learned Senior Counsel appearing for the Review Applicants.

13. As far as the decision reported in Parsion Devi and Others Vs. Sumitri Devi and Others, is concerned, it is held that an error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of Review under Order 47 Rule 1, CPC In exercise of the jurisdiction under Order 47 Rule 1, C.P.C, it is not permissible for an erroneous decision to be "reheard and corrected". The Honourable Supreme Court of India has further held that a Review Petition has a limited purpose and cannot be allowed to be "an appeal in disguise". The Honourable Supreme Court of India has however held in this decision that there is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the later only can be corrected by exercise of review jurisdiction. If the above said principles laid down by the Honourable Supreme Court of India are applied to the case on hand, the submissions of Mr. T.R. Rajagopalan, Learned Senior Counsel, cannot be accepted as it would amount to converting the review jurisdiction into an appellate jurisdiction. Even assuming the order of the Division Bench to be erroneous, it is not permissible for us to rehear the matter afresh and correct the decision. As the review petitions have a limited purpose, it cannot be allowed to be "an appeal in disguise". The five errors, which according to Mr. T.R. Rajagopalan, Learned Senior Counsel are errors apparent on the face of the record, in our considered view, cannot be called or termed as errors apparent on the face of the record.

14. An error which is not self-evident and has to be detected by process of reasoning can hardly be said to be an error apparent on the face of the record, justifying the Court to exercise the power of review under Order 47, Rule 1 of CPC In our considered view, in exercise of jurisdiction under Order 47, Rule 1, C.P.C., it is not permissible for an erroneous decision to be reheard and corrected. Unfortunately, all the factual and legal submissions sought to be reviewed. The above said decisions relied upon by the learned Senior Counsel

were also not referred to, relied upon and arguments advanced on that basis before the Division Bench. The relevant part of the order sought to be reviewed, which has been extracted above, does not indicate or show that the above said submissions were made before the Division Bench. In this context, it is pertinent to point out that it is neither stated in the Review Applications nor submitted by Mr. T.R. Rajagopalan, learned Senior Counsel during the course of his elaborate arguments that the above said submissions were made but the same have been omitted to be considered by the Division Bench. But having failed to make the above said factual submissions and legal arguments before the Division Bench, it is not open to the Review Applicants to raise all those factual and legal submissions in the Review Applications. A Review Application has a limited purpose and cannot be allowed to be appeal in disguise.

11. A reading of the above decisions would show that the submissions, which have not been admittedly made before the courts below and before this Court, cannot be raised in the review application. Having failed to make certain factual submissions and legal arguments, the review applicant is not entitled to raise the same in the present review application. Hence, I do not find any material to review the judgment rendered by this Court.

12. In fine, the Review Application is, accordingly, dismissed. No costs. Connected C.M.P.is closed.