

(2009) 08 MAD CK 0250
In the Madras High Court
Case No : C.R.P. (N.P.D) No. 2284 of 2008

Ranganathan

APPELLANT

Vs

The Assistant Engineer T.N.E.B.O and M Urban and
Pandurangan

RESPONDENT

Date of Decision : 04-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114

Citation : (2009) 08 MAD CK 0250

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : S. Geetha, for the Appellant; N. Muthaswami and Sunanda Suren,
for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The petitioner/second defendant has filed this Civil Revision Petition as against the order dated 13.03.08 in I.A. No. 127 of 2005 in O.S. No. 141 of 2004 passed by the Learned District Munsif cum Judicial Magistrate, Arcot, Vellore District in dismissing the review petition filed u/s 114, Order 47, Rule 1 of the Civil Procedure Code.

2. The trial Court, while passing orders has opined that "the application for review of judgment and decree should be supported by a concrete reasons that the error is apparent on the face of the record. Due to that error the applicant desires to review the order should be stated in the petition. As such the application is bald and fact, and further, the remedy wideopen for the petitioner is to prefer an appeal against the judgment and decree and by way of modification the petitioner want to introduce new facts and want to reverse the judgment in his favour which is not permissible under the guise of review petition" and resultantly dismissed the application without costs.

3. The learned Counsel for the revision petitioner the second plaintiff urges

before this Court that the order of trial court dated 13.03.2008 is against law and the same is unsustainable and also that the trial Court should have allowed the review application when it has given a finding that suit "B" Schedule property is a common street and moreover, the trial Court ought to have decreed the prayer for mandatory injunction directing the fourth defendant to remove the house constructed and also when the Advocate Commissioner in his report in Exhibit C1 has stated that "in the Udayar Street on the eastern side obstructing the access to the said street one Pandurangan has constructed a house and also encroached the suit property to some extent" and added further ,finding that the suit "B" schedule property is a common street and that the fourth defendant have no right to construct a house, then the trial Court ought to have granted a decree of mandatory injunction directing the fourth defendant to remove the house constructed in the "B" Schedule property and as a matter of fact, concept of review has been misunderstood by the trial Court when it has granted the relief of declaration and the trial Court judgment needs a review inasmuch as the refusal to grant the relief of mandatory injunction is an error apparent on the face of record, and also a sufficient reason as enjoined under Order 47 Rule 1 of CPC and looking at from any angle, the civil revision petition has to be allowed in the interest of justice by setting aside the final orders passed in I.A. No. 127 of 2005 by the trial Court.

4. In response, the learned Counsel for the second respondent/fourth defendant submits that the trial Court has come to the right conclusion while dismissing I.A. No. 127 of 2005 and if at all the revision petitioner has any grievance as against the judgment and decree passed in the main case, the remedy open to the petitioner is to prefer an appeal, in accordance with law and in short, the trial Court has passed a well-considered and reasoned order in dismissing the application and hence, prays for dismissal of the civil revision petition.

5. This Court has paid its anxious consideration to the contentions raised by the learned Counsel appearing for the parties and noticed the same.

6. In I.A. No. 127 of 2005 it is averred by the revision petitioner that the judgment and decree passed by the trial Court in O.S. No. 141 of 2004 dated 31.01.2005 has seriously affected the right of the revision petitioner and that the trial Court has framed several issues and except the issue No. 5 all other issues have been decided in favour of the petitioner namely 1 to 4 and 6 to 8 and further, on 06.01.2000 additional issues 1 to 9 have been framed in which except the 4th and 7th issues, other issues 1 to 3, 5 and 6, 8 to 9 have been decided in favour of the petitioner and on 27.09.2001 an additional issues 1 to 3 were framed which have been decided against the petitioner and for additional issue No. 5 it is held that the "B" Schedule property is a common street and additional issue No. 6 it is decided the second plaintiff has got a right to ingress and outgress through this common street and in additional issue No. 7 it is held that "B" Schedule property is decided as common street and the 4th defendant has no right to construct a house etc., and therefore, since there is an error apparent on

the face of the record judgment and decree passed by the trial Court are to be reviewed and as such, I.A. No. 127 of 2005 filed by the revision petitioner should have been allowed by the trial Court, to prevent an aberration of justice.

7. It is borne in mind that the power of review specified under Order 47 Rule 1 of CPC is admittedly a creation of a statute. No wonder, the review application or proceedings thereto should not be by way of an appeal and directly the same will have to be construed as per Order 47 Rule 1 of Civil Procedure Code, strictly, in the considered opinion of this Court. As a matter of fact, a review Court cannot sit as an Appellate Court. Moreover, mere possibility of two views is not a basis for review in reassessing the evidence and pointing out the deficiencies in the judgment of the Court is not proper as opined by this Court. It is pertinent to point out that a wrong decision can be a subject matter of an appeal to a higher forum but the review is certainly not permissible on the premise that a Court of Law has proceeded on a wrong proposition of law or otherwise. The ambit of review is a limited one and a mere fact that another view is possible based on material on record is not a ground for review. To put it differently, the power of review cannot be exercised to the substitute view already taken by the court. The review cannot be treated as an appeal in disguise.

8. It is to be noted that a Court of Law cannot review its judgment merely on merits since it has come to a different conclusion on further argument and further consideration as per decision of this Court in S.O. Krishna Aiyar Vs. S.V. Narayanan alias S.V. Doraiswami and Others, .

9. Be that as it may the exercise of inherent power by a Court of Law must be employed on bare necessity and the same can neither be well defined nor circumscribed in law.

10. A review sought for is not permissible within the ambit and scope of Section 114 and Order 47 of CPC because something that has been decided earlier on merits sought to be decided once again. It is an axiomatic fact that the power of review is not absolute and is hedged by limitations mentioned in Order 47 of Civil Procedure Code.

11. At this juncture, it is significant to point out that there is marked distinction between an erroneous decision and an error apparent on the face of the record. An erroneous decision can be rectified/corrected by a higher forum and an error apparent on the face of record or by exercise of the review jurisdiction.

12. It is true that an error apparent on the face of record cannot be defined precisely, there being an element of indefiniteness inherent in its nature. It must be left to be determined judicially on the given set of facts and circumstances of each case. Only a manifest error will be a ground for review. The review court cannot act as an Appellate Court and error on the face of record means an error which strikes one by merely looking at record and will not require any long drawn process or reasoning.

13. Equally, it is an established law that "any other sufficient cause" only refers that, a reason sufficient on grounds atleast to those specified thereto. A review is not permissible even if a court of law has proceeded on a wrong exposition of law or even has wrongly decided the question of law more so, a review is also not permissible on the premise that the decision is an erroneous one on merits as per decision Dolat Industries Vs. Krishna Oil Industries and Another, .

14. On a careful consideration of respective contentions and also having note of conspectus facts and circumstances of the case in an integral fashion this Court is of the considered view that the remedy open to the revision petitioner/second plaintiff is to prefer an appeal as against the judgment and decree in O.S. No. 141 of 2004 dated 31.01.2005 passed by trial Court and as such the I.A. No. 127 of 2005 filed by the petitioner before the trial Court praying for review of judgment passed earlier to the application is devoid of merits and a perusal of the order passed by the trial Court clearly points out that the order of the trial Court does not suffer from any serious infirmity or illegality and viewed in that perspective the civil revision petition filed the petition and revision petition fails.

15. In result the civil revision petition is dismissed leaving the parties to bear there own costs. The order passed by the trial Court in I.A. No. 127 of 2005 dated 13.03.2008 is affirmed by this Court. Considering the facts and circumstances of the case there shall be no order as to costs.