
(1999) 08 MAD CK 0082

In the Madras High Court

Case No : Review Application 34 of 1999 and C.M.P. No. 6380 of 1999

R.M.V. Karuppiyah Ambalam

APPELLANT

Vs

Sr. Govinda Iyer and two others

RESPONDENT

Date of Decision : 23-08-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114

Citation : (1999) 3 CTC 129

Hon'ble Judges : A. Raman, J

Bench : Single Bench

Advocate : M/s. Nalini Chidambaram, for Mr. S. Silambannan, for the Appellant;
Mr. ARL. Sundaresan, for the Respondent

Judgement

A. Raman, J.—This application is filed to review the order passed by this Court, in C.R.P. No. 1283 of 1995. C.M.P. No. 6380 of 1999 is

for stay of further proceedings, pursuant to the order passed in the Civil Revision Petition.

2. A Receiver was appointed by the Sub-Court, Devakkottai, for the administration and management of the Estate of the kottaiyur Nattars, situate

within Kottaiyur and Sekkala Kottai village limits. The said estate has extensive properties. The total extent of properties more than 1800 acres. A

preliminary decree was passed in O.S. No. 72/33 for partition and allotment of property to each of the 5/72 sharers. Thiru Govinda Iyer Advocate

was appointed as the receiver prior to 1945, when Dr. Azhagappa Chettiar College was founded, the Government of Tamil Nadu acquired

extensive area for the said college and in that process an extent of 252 acres of land, belonging to Kottaiyur Nattars' Estate was also acquired. The

acquisition was challenged and ultimately, there was a compromise with regard

to 252 acres acquired from out of the said Estate. Under the compromise, in view of the claim for enhanced compensation, the State of Tamil Nadu and Dr. Alagappa Chettiar's College had agreed to resurrender possession of about 62 acres and 80 cents from out of the acquired 252 acres, and deliver possession to the Receiver. Later an extent of 3 acres and 80 cents on the north-eastern corner was notified as an area for District Sports Meet by the Government. 3 acres and 80 cents formed part of 62 and odd acres with reference to which, the compromise was entered into between the Government of Tamil Nadu, Dr. Alagappa Chettiar College Authorities and the Receiver. The Nattars were keen about construction of two temples viz., Sri Karpaga Vinayagar and Kottainachiamman at Kottaiyur. But, there was no sufficient fund for construction of the same, therefore, the Receiver applied for permission of sale of a portion of the property situate within Karaikudi Municipal limits and utilise the sale proceeds for construction of the said two Temples, and accordingly, a lay out was formed and some plots were sold out. Even then, the funds were not sufficient. Therefore, it was agreed that an extent of 38 acres from out of the 62 acres surrendered by Tamil Nadu Government and Dr. Alagappa Chettiar College Authorities pursuant to the compromise, should be sold. There was an offer to buy the same for Rs. 5,00,000 by Sri Karpaga Vinayagar Firm. With the sanction of the Court, the sale was executed. Karpaga Vinayagar Firm spent considerable amount for the development of the property. But, it was found that there was a shortage of 3 acres and 88 cents on the north eastern portion and thus, to that extent, there is a failure of title and breach of warranty to convey in favour of Karpaga Vinayagar Firm, the 3 acres and 88 cents. Therefore, Govinda Iyer, the Receiver filed an application before the Sub-court, Devakkottai, in I.A. No. 62 of 1986, praying to ratify the decision of the Receiver as approved by the Nattars to give 5 acres of contiguous property on the south sold to Karpaga Vinayagar Firm, to compensate them for their failure of title suffered by them with regard to 3 acres and 88 cents and further permitting the Receiver to execute necessary sale deeds for the said 5 acres.

3. The said application was not taken up and in therefore, Karpaga Vinayagar Firm through its power Agent filed an application in I.A. No. 106 of

1993 to issue directions to the Receiver to implement the agreement to compensate the petitioner's loss by sale of other lands as per report of the Receiver in I.A. No. 62 of 1986 or in the event of suit becoming inevitable to grant permission to the petitioner to sue the Receiver for specific performance.

4. Since the Receiver Govinda Iyer died, in the meanwhile, Advocate Chellathurai, who was appointed as Receiver and who succeeded him filed his report. The succeeding Receiver suggested that some compensation can be paid instead of conveying any land, to make good the deficiency.

5. The Subordinate Judge, Devakkottai, heard both these applications. He granted sanction, accepting the application filed by the Receiver in I.A.

No. 62 of 1986. As regard I.A. No. 106 of 1993, he passed an order on the same say, holding that since I.A. No. 62 of 1986 has been allowed,

the petition is closed. Aggrieved by the Order passed by the Subordinate Judge, Devakkottai, one of the objectors viz., Karuppiyah Ambalam

preferred Revision to this Court in C.R.P. No. 1283 of 1995. The said Revision Petition was dismissed by this Court.

6. Learned Senior Counsel Mrs. Nalini Chidamabaram submitted that the Order passed is liable to be reviewed. The only ground urged by the

learned Senior Counsel is that this Court while dismissing the Civil revision petition has not taken into consideration, the prayer asked for by the

Receiver in I.A. No. 62 of 1986, or the prayer asked for by the 3rd party in, the application viz., I.A. No. 106 of 1993, and the fact that the

petition filed by the 3rd party viz., Karpaga Vinayagar Firm for a direction has been closed and dismissed, whereas in the petition filed by the

Receiver only permission or sanction was asked for. According when the order that has been passed by this Court, proceeds as though a direction

was asked for, and accordingly a direction has been granted by this Court to legal it is not so and it would amount to error apparent on the face of

records. Hence, the order has to be reviewed.

7. I am afraid that this contention raised by the learned Senior Counsel cannot accepted. Firstly, for the reason that against the order passed by this

Court in C.R.P. No. 1283 of 1995, the matter was taken to the Apex Court by way of SLP and the same was dismissed. The fundamental

position of law is that the Review would arise only if the person aggrieved has

not pursued his remedy. In other words, this is an order from which an appeal was preferred by filing SLP and the same was dismissed by the Supreme Court. Therefore, where the matter has been appealed against and has been lost, such a person cannot resort to Order 47 or ask for Review of the matter.

8. Moreover, the point of law must be indisputable. An error apparent on the face of records must be such as can be seen easily by one who reads it and it must be obvious and a patent mistake. Anything which is not patent and obvious and which is something that can be established only by a process of reasoning and of which there may be considerably two opinions, cannot amount to error apparent on the face of records. Whether the order passed by the Court is in the nature of direction or permission and whether in the circumstances, it would amount to only a sanction and if so what is the effect of non-compliance of that order by the Receiver are all questions for which answers are not obvious. A process of reasoning has to be gone through to decide when two views are possible, and it a debatable point, it can't be termed as error apparent. When an elaborate process of reasoning is necessary to arrive at the conclusion as in this case it cannot be stated that it is an error apparent on the face of records.

9. It is to be pointed out that the Order permits or directs as the case may be, the Receiver. The Receiver has not chosen to entertain any doubt as to the nature and effect of the Order. Assuming it is in the nature of direction and if it is not complied with, it is a matter between the Receiver and the Court and it is for the Receiver to explain or give reasons as to why the direction could not be complied with. I do not think that the present petitioner will have any say in that regard. Therefore, what is going to be the effect of the Order, whether it is in the nature of sanction and permission and whether it is in the nature of direction, it is a matter for the concerned parties to think about and it is a matter for the Court to adjudicate upon if and when there is failure to comply with that order. At this stage, it is not open to the petitioner on that ground now to contend as to the effect of the said order.

10. The lower court has passed the order on the application filed by the Receiver in I.A. No. 62 of 1986, while it dismissed the application filed by the party concerned viz., Karpaga Vinayagar Firm.

11. In para 6 of the order passed by this Court, it is observed as follows:

"Now what we have to consider in the Civil Revision Petition is whether there is Justification in the order passed by the Subordinate Judge,

directing the Receiver to execute a sale deed?

Of course, in the petition filed by the Receiver, no direction was sought for, but permission was sought for to execute the sale deed, relating to

4.60 acres in favour of the 3rd respondent. The said permission was accorded by the Sub-Court. Therefore, when this Court posed the question,

it actually took up for consideration only the permission granted by the lower court to the Receiver. It is the Receiver, who has filed the application,

seeking permission. When that permission is granted, it may not be construed, in such circumstances, as a direction. The whole order has to be

read and considered in the background of receivers request Therefore, I do not find that there is any material error apparent on the face of

records. In the circumstances of the case, what this Court intended was only to approve the order of the lower court, granting permission and it is

for the concerned Receiver to either construe it as a permission or direction and proceed accordingly. Therefore, in such circumstances, I do not

find any merit in this Review. There is neither any error of law nor it can be stated that there is any discovery of new matter or circumstances in this

case. It is also obvious that there is not mistake apparent on the face of records. Moreover, I do not find that there exists any sufficient cause. The

question urged by the petitioner's counsel will not amount to an indisputable question much less of law, not it can be construed as an obvious and

patent mistake that could be seen by anyone without resorting to a process of reasoning. It can also be stated that when this Court employed the

word "direction", it actually meant "permission".

12. In the result, this Review application is dismissed as devoid of merit. There is no order as to cost. Consequently, C.M.P. No. 6380 of 1999

shall stand dismissed.