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Rev.Appln.No.63 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Rev.Appln.No.63 of 2020 and
CMP.No.10321 of 2020 in SA.No.914 of 2005

1.R.Radhakrishna Naidu (died)
2.Munirathinamal
3.Purushothaman
4.Ravi
5.Bharathi
6.Shanthi

...Petitioners

Vs.

1.Sasikala
2.Ganapathi Naidu
3.Pachaiammal
4.Vittal

...Respondents

PRAYER : Review Application is filed under Section 114 of CPC r/w Order 47 Rule 1 of CPC to review the judgment and decree passed in SA.No.914 of 2015 dated 23.01.2020.

For Petitioners : Mr.Parthasarathy,
Senior Counsel
for Mr.PKishnan



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For Respondents

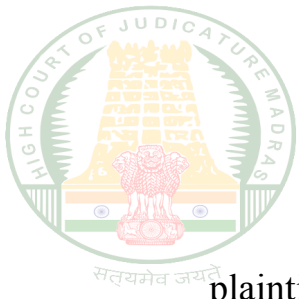
For R1 : Mr.Rahul Jaganathan

For R2 to 4 : No appearance

ORDER

This review application has been filed to review the judgment and decree passed by this Court in SA.No.914 of 2015 dated 23.01.2020.

2. The petitioners are the appellants in the second appeal. They filed suit for specific performance and permanent injunction. The original suit was filed by the deceased plaintiff i.e. the husband of the second petitioner herein and the first defendant is his brother. They were members of a joint hindu family and owned joint family properties. They divided their shares by a partition deed dated 10.03.1983. As per the partition deed, the suit properties were allotted in favour of the second respondent herein. All the defendants are being family members decided to sell their shares to the plaintiff and received advance amount and executed agreement for sale. The suit was decreed in favour of the

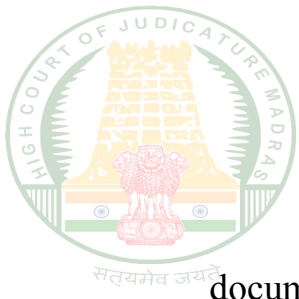


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plaintiff. Aggrieved by the same, the fourth defendant who is being the purchaser of the property, filed appeal suit and the same was allowed. Aggrieved by the same, the petitioners herein preferred second appeal. This court dismissed the second appeal and confirmed the judgment and decree passed by the appellate court.

3. Mr.Parthasarathy, the learned Senior Counsel appearing for the petitioners submitted that though this Court framed substantial questions of law as (i) In order to prove readiness and willingness in a suit for specific performance, where a pre suit notice is mandatorily required? and (ii) Whether the appellate court's finding that Ex.A5 is not enforceable is contrary to its own findings? However, this Court failed to answer those substantial questions of law. The sale agreement was executed on 09.08.1986 for the total sale consideration of Rs.36,000/- and an amount of Rs.12,400/- was paid, in addition, to the discharge of mortgage loan and the Land Development Bank loan. The plaintiff marked the discharge of loan due to Tiruvallur Land Development Bank as Ex.A3 and clearance of mortgage deed was marked as Ex.A4. Both the



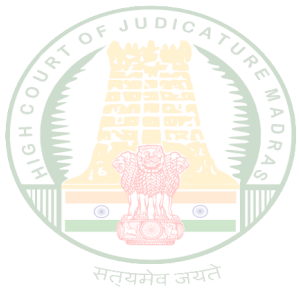
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documents prior to the sale deed dated 21.08.1986. It was not brought to the knowledge of this Court and this Court erred in recording that the exhibits subsequent to the sale agreement. The plaintiff was inducted in possession of the suit property as on the date of agreement for sale and the same is admitted by DW1. Therefore, the said admission is the best piece of evidence. Even then, this Court erred in holding that the plaintiff failed to prove the possession of the suit property.

3.1 He further submitted that the finding of the judgment of this Court is an apparent error on the face of the records as it is against the admission made in the evidence of DW1 in respect of possession. Therefore, the subsequent purchaser is attempting to disturb the peaceful possession and enjoyment of the subject property. The plaintiff has proved his financial capacity to show his readiness and also proved his conduct towards performing the agreement by exhibiting his willingness. Therefore, the first substantial question of law is not answered by this Court. In support of his contention, he relied upon the following judgments:

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- (i) ***Vijay Arjun Bhagat and Others Vs. Nana Laxman Tapkire and Others*** reported in ***(2018) 6 SCC 727***
- (ii) ***Shrikant Vs. Narayan Singh (dead) through Legal Representatives and others*** reported in ***(2018) 18 SCC 232***
- (iii) ***Tanuku Taluk Village Officers' Association Vs. Tanuku Municipality and Others*** reported in ***(2019) 4 SCC 397***

wherein the Hon'ble Supreme Court of India held that though the High Court admitted the second appeals on three substantial questions of law, but instead of answering those questions of law dismissed the appeals by answering a question regarding maintainability of suit which was not framed. It is impermissible to dismiss without answering the substantial questions of law. Further held that the High Court ought to have examined the substantial questions of law framed by it and answered the same in accordance with law.

4. Heard, Mr.Parthasarathy, the learned Senior Counsel appearing for the petitioners and Mr.Rahul Jaganathan, the learned counsel for the first respondent.



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5. All the grounds raised by the petitioners are not permissible to review the order passed by this Court. It is relevant to extract the provision under Section 114 of C.P.C. hereunder:

114. Review? Subject as aforesaid, any person considering himself aggrieved?

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Court, or

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

Therefore, the power of review is restricted to error apparent on the face of record.

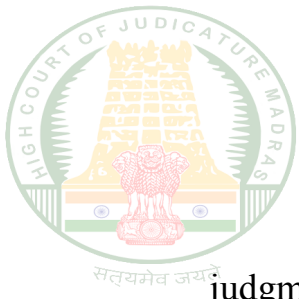


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6. Insofar the substantial questions of law are concerned, this Court while admitting the second appeal, framed the substantial questions of law. This Court answered to the substantial questions of law that in view of the failure of the plaintiff to establish his case by placing convincing and satisfactory material to satisfy this Court, this Court does not find any valid reason to interfere with the reasonings and findings rendered by the first appellate court. Therefore, this Court is of the considered opinion that no substantial questions of law are involved in this appeal and substantial questions of law formulated by this Court are answered in favour of the fourth defendant in the suit.

7. The power of review can be exercised by court of law for correction of mistakes and not to substitute the view already taken. The review power is restricted and substantial relief cannot be asked for in the guise of review. In review, re-hearing the matter on merits is not permissible under any law. Therefore, the grounds raised by the petitioners cannot be considered to review the judgment and decree passed by by this Court. It is settled principal of law that review of the



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judgment is permitted only within the provisions of Order 47 of CPC and Section 114 CPC. The judgment can be reviewed only in the case of mistake or error apparent on the face of the record requiring correction of such mistake or error in the judgment. The grounds raised by the applicants are on the merits of the second appeal which cannot be reviewed.

8. Further, an erroneous finding is not a ground for review. Similarly, improper consideration of evidence available on record and overlooking important evidence are not sufficient grounds for review. Reappraisal of evidence to give a different conclusion would amount to exercise of appellate jurisdiction and not review jurisdiction. In review application, a court does not sit on appeal over its own judgment. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. The power of review can be exercised for correction of a mistake and not to substitute a view. Under these circumstances, the present review application is liable to be dismissed.

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9. Accordingly, this review application is dismissed.

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Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Internet: Yes

Index : Yes/No

Speaking/Non speaking order
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G.K.ILANTHIRAIYAN. J.

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To

- 1.The Additional District Judge,
Fast Track Court No.V,
Chengalpattu
- 2.The Subordinate Judge,
Tiruvallur
- 3.The Section Officer,
VR Section,
Madras High Court,
Chennai.

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