

S. MURALI SUNDARAM

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v.

JOTHIBAI KANNAN & ORS.

(Civil Appeal Nos.1167-1170 of 2023)

FEBRUARY 24, 2023

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[M. R. SHAH AND C.T. RAVIKUMAR, JJ.]

Code of Civil Procedure, 1908 – Or. XLVII r 1, s.114 – Review of judgment under –Appellant filed writ petition before the High Court against the order of the Tiruchirappalli City Municipal Corporation in respect of the pathway – High Court allowed the writ petition of the appellant on merits after considering a survey report – High Court discarded the survey report – Thereafter, the respondent filed the review petition before the High Court – High Court allowed the review petition after considering the same survey report and set aside its judgment holding the same to be erroneous – Whether in the facts and circumstances of the case the High Court justified in allowing the review application filed u/Or.47, r.1 CPC and setting aside the reasoned judgment and order passed in the main writ petition – Held: It is settled that power of review can be exercised for correction of mistake but not to substitute a view – In the instant case, the High Court exceeded in its jurisdiction and exercised the jurisdiction not vested in it while exercising the review jurisdiction u/Or.47, r.1 r/w. s.114 CPC – Once the survey report fell for consideration before the High Court while deciding the main writ petition thereafter the same could not have been considered again while deciding review application – If a judgment sought to be reviewed is erroneous, cannot be subject of review u/Or.47, r.1 but can be challenged by way of appeal.

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Allowing the appeals, the Court

HELD: 1. In the case of *Perry Kansagra* this Court has observed that while exercising the review jurisdiction in an application under Order 47 Rule 1 read with Section 114 CPC, the Review Court does not sit in appeal over its own order. It is observed that a rehearing of the matter is impermissible in law. It is further observed that review is not appeal in disguise. It is observed that power of review can be exercised for correction of

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A a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. It is further observed that it is wholly unjustified and exhibits a tendency to rewrite a judgment by which the controversy has been finally decided. [Para 5.1][52-C-E]

B 2. In the case of *Shanti Conductors (P) Ltd.*, it is observed and held that scope of review under Order 47 Rule 1 CPC read with Section 114 CPC is limited and under the guise of review, the petitioner cannot be permitted to reagitate and reargue questions which have already been addressed and decided. It is further observed 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 record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. [Para 5.3][53-B-C]

D 3. Applying the law laid down by this Court in the aforesaid two decisions to the facts of the case on hand, the court is of the opinion that in the present case while allowing the review application and setting aside the judgment and order dated 03.03.2017 passed in Writ Petition No.8606 of 2010 the High Court has exceeded in its jurisdiction and has exercised the jurisdiction not vested in it while exercising the review jurisdiction under Order 47 Rule 1 read with Section 114 CPC. From the reasoning given by the High Court, it appears that according to the High Court the judgment and order passed in Writ Petition No.8606 of 2010 was erroneous. While passing the impugned judgment and order the High Court has observed and considered the Survey Report dated 12.12.2007 which was already dealt with by the High Court while deciding the main writ petition and the High Court discarded and/or not considered the Survey Report dated 12.12.2007. Once the Survey Report dated 12.12.2007 fell for consideration before the High Court while deciding the main writ petition thereafter the same could not have been considered again by the High Court while deciding the review application. [Para 5.3][53-D-F]

H *Perry Kansagra vs. Smriti Madan Kansagra*, (2019) 20 SCC 753; *Shanti Conductors (P) Ltd. Vs. Assam SEB*, (2020) 2 SCC 677 : 2019 (16) SCR 252 – relied on.

Case Law Reference

(2019) 20 SCC 753 **relied on** **Para 5.1**

[2019] 16 SCR 252 **relied on** **Para 5.3**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.1167-1170 of 2023.

From the Judgment and Order dated 29.06.2021 of the High Court of Judicature at Madras at Madurai in RAMD No.21 of 2017, WPMD Nos.14847, 16256 of 2017 and CPMD No.1109 of 2017.

V. Prabhakar, Ms. Jyoti Parashar, N.J. Ramchandrar, S. Rajappa, Advs. for the Appellant.

Ms. Haripriya Padmanabhan, T. Mahendhran, Raghunatha Sethupathy B, Ms. Tanya Srivastava, S. Sabari Bala Pandian, Ms. Pariksha, Ms. Priya R, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 29.06.2021 passed by the High Court of judicature at Madras at Madurai Bench passed in Review Application (MD) No.21 of 2017 as well as the orders passed in Writ Petition (MD) No.14847 of 2017, Writ Petition (MD) No.16256 of 2017 as well as the order in Contempt Petition (MD) No.1109 of 2017 by which the High Court in exercise of review jurisdiction has allowed the Review Application No.21 of 2017 and has set aside the order dated 03.03.2017 passed in Writ Petition (MD) No.8606 of 2010, the original writ petitioner of Writ Petition (MD) No.8606 of 2010 has preferred the present appeals.

2. The issue involved in the present appeals as such is in a very narrow Compass.

2.1 Feeling aggrieved and dissatisfied with the order passed by the Tiruchirappalli City Municipal Corporation dated 17.07.2008 in respect of the pathway comprised in New TS No.43 of ward 42, Block AG 15, Indian Bank Colony, Simco Meter Road, Tiruchirappalli Taluk and District, the appellant herein preferred the Writ Petition (MD) No.8606 of 2010 before the High Court. Before the High Court the respondents herein – review petitioners heavily relied upon the report of the Survey Department and the measurements given in the survey report. However, the High Court discarded the survey report and chosen to rely upon other two

- A reports and consequently allowed the writ petitions by detailed judgment and order dated 03.03.2017.

2.2 That thereafter the contesting respondents herein – the review applicants filed the present Review Application (MD) No.21 of 2017 in Writ Petition (MD) No.8606 of 2010 under Order 47 Rule 1 of Code of Civil Procedure, 1908 (hereinafter referred to as ‘CPC’). One Mr. S.M. Gajendran filed the Writ Petition (MD) No.14847 of 2017 as well as Writ Petition (MD) No.16256 of 2017 *inter alia* challenging the order dated 03.07.2017 in enquiry in Na. Ka. No.5293/A4/2017 as well as the order dated 09.06.2017 in Na. Ka. No.10048/2016/F1 and direct the respondents to accept the registered gift settlement made in favour of the Corporation in settling seven public roads by registration Corporation. By the impugned judgment and order the High Court has allowed the Review Petition (MD) No.21 of 2017 and has set aside the judgment and order dated 03.03.2017 passed in Writ Petition No.8606 of 2010. Consequently, the High Court has dismissed the Writ Petition Nos. 14847 of 2017 & 16256 of 2017 filed by S.M. Gajendran. Consequently, the High Court has also dismissed the Contempt Petition No.1109 of 2017. The impugned common judgment and order passed by the High Court and mainly allowing the review application is the subject matter of present appeals.

- E 2.3 Mr. V. Prabhakar, learned counsel appearing on behalf of the appellant – original writ petitioner has vehemently submitted that in the facts and circumstances of the case the High Court has erred in allowing the Review Application and has materially erred in quashing and setting aside the judgment and order dated 03.03.2017 passed in Writ Petition No.8606 of 2010.

F 2.4 It is further submitted by learned counsel appearing on behalf of the appellant that while allowing the review application and quashing and setting aside the order passed in the main writ petition, the High Court has exceeded in its jurisdiction while deciding the review application.

- G 2.5 It is further submitted by learned counsel appearing on behalf of the appellant that while allowing the review application the High Court has exceeded in its jurisdiction while deciding the review application and has exercised the jurisdiction not vested in it.

H 2.6 It is further submitted by learned counsel appearing on behalf of the appellant that the High Court has exercised the review jurisdiction as if the High Court was exercising the appellate jurisdiction against the

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judgment and order dated 03.03.2017 in Writ Petition No.8606 of 2010 which is wholly impermissible. Reliance is placed on the decisions of this Court in the case of **Perry Kansagra vs. Smriti Madan Kansagra, (2019) 20 SCC 753** as well as in **Shanti Conductors (P) Ltd. Vs. Assam SEB, (2020) 2 SCC 677**. A

2.7 It is further submitted by learned counsel appearing on behalf of the appellant that according to the High Court and so observed in the impugned judgment and order, the judgment and order dated 03.03.2017 passed in Writ Petition No.8606 of 2010 was erroneous. It is submitted that however an erroneous order cannot be a subject matter of review and an erroneous order however it may be cannot be set aside in exercise of the review jurisdiction. It is submitted in the present case all the grounds on which the review application was filed and the grounds on which the review application is allowed were as such dealt with and considered by the High Court while deciding the writ petition. It is submitted that therefore there was no error apparent on the face of the record and/or there was no mistake on the face of the record which could have been corrected in exercise of the review jurisdiction. B C D

Making above submissions and relying upon the above decisions, it is prayed to allow the present appeals.

3. Present appeals are vehemently opposed by Ms.Haripriya Padmanabhan, learned counsel appearing on behalf of the contesting respondents – original review applicants. It is vehemently submitted by learned counsel appearing on behalf of the review applicants that while deciding the Writ Petition No.8606 of 2010 the High Court erroneously discarded the survey report and relied upon the private reports. It is submitted that as such a fraud was committed by the original writ petitioner as well as S.M. Gajendran as they relied upon the forged reports/documents. It is submitted that therefore, this Court may not exercise the powers under Article 136 of the Constitution of India. It is submitted that the High Court found that the earlier order dated 03.03.2017 passed in Writ Petition No.8606 of 2010 was erroneous and therefore, the High Court is justified in setting aside the judgment and order dated 03.03.2017 passed in Writ Petition No.8606 of 2010. E F G

Making above submissions, it is prayed to dismiss the present appeals.

4. We have heard learned counsel appearing on behalf of the respective parties at length. H

- A 5. At the outset, it is required to be noted that by the impugned judgment and order the High Court has allowed the review application filed under Order 47 Rule 1 CPC and has set aside the judgment and order dated 03.03.2017 passed in Writ Petition No.8606 of 2010. While allowing the review application the High Court has observed and held that the earlier judgment and order dated 03.03.2017 in Writ Petition
- B No.8606 of 2010 was erroneous. Therefore, question which is posed before this Court for consideration is whether in the facts and circumstances of the case the High Court is justified in allowing the review application filed under Order 47 Rule 1 CPC and setting aside the reasoned judgment and order passed in main writ petition?
- C 5.1 While considering the aforesaid issue two decisions of this Court on Order 47 Rule 1 read with Section 114 CPC are required to be referred to? In the case of **Perry Kansagra (supra)** this Court has observed that while exercising the review jurisdiction in an application under Order 47 Rule 1 read with Section 114 CPC, the Review Court does not sit in appeal over its own order. It is observed that a rehearing of the matter is impermissible in law. It is further observed that review is not appeal in disguise. It is observed that power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. It is further observed that it is wholly unjustified and exhibits a
- D tendency to rewrite a judgment by which the controversy has been finally decided. After considering catena of decisions on exercise of review powers and principles relating to exercise of review jurisdiction under Order 47 Rule 1 CPC this Court had summed upon as under:
- E “(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.
- F (ii) Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on the points where there may conceivably
- G by two opinions.
- (iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.
- (iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.
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(v) An application for review may be necessitated by way of invoking the doctrine *actus curiae neminem gravabit*.” A

5.2 It is further observed in the said decision that an error which is required to be detected by a process of reasoning can hardly be said to be an error on the face of the record.

5.3 In the case of **Shanti Conductors (P) Ltd. (supra)**, it is observed and held that scope of review under Order 47 Rule 1 CPC read with Section 114 CPC is limited and under the guise of review, the petitioner cannot be permitted to reargue questions which have already been addressed and decided. It is further observed 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 record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. B C

Applying the law laid down by this Court in the aforesaid two decisions to the facts of the case on hand, we are of the opinion that in the present case while allowing the review application and setting aside the judgment and order dated 03.03.2017 passed in Writ Petition No.8606 of 2010 the High Court has exceeded in its jurisdiction and has exercised the jurisdiction not vested in it while exercising the review jurisdiction under Order 47 Rule 1 read with Section 114 CPC. From the reasoning given by the High Court, it appears that according to the High Court the judgment and order passed in Writ Petition No.8606 of 2010 was erroneous. While passing the impugned judgment and order the High Court has observed and considered the Survey Report dated 12.12.2007 which was already dealt with by the High Court while deciding the main writ petition and the High Court discarded and/or not considered the Survey Report dated 12.12.2007. Once the Survey Report dated 12.12.2007 fell for consideration before the High Court while deciding the main writ petition thereafter the same could not have been considered again by the High Court while deciding the review application. D E F

5.4 From the impugned judgment and order passed by the High Court it appears that the High Court has decided the review application as if the High Court was exercising the appellate jurisdiction against the judgment and order dated 03.03.2017 passed in Writ Petition (MD) No.8606 of 2010 which is wholly impermissible while considering the review application under Order 47 Rule 1 read with Section 114 CPC. G

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A 5.5 From the impugned judgment and order passed by the High Court allowing the review application it is observed in paragraph 33 as under:

B “33. The above legal principals were born in mind by this Court while considering the review application. Brushing aside a survey report, which was available on record and which brought out tampering of official records, ought to have been taken note of by the Learned Writ Court, while considering the prayer sought for in the Writ Petition. This has led to an error, which is manifest on the face of the order. Furthermore, the Court proceeded on the basis that S.M. Gajendran had executed a gift deed without nothing the fact that the gift deed was a document, which was unilaterally executed by him, not accepted by the respondent Corporation and could not have been treated to be a valid gift. These facts have emerged on the fact of the order passed in the Writ Petition without any requirement for a long-drawn reasoning. Therefore,

C we are fully satisfied that we are justified in exercising our review jurisdiction. For the above reasons, we are of the clear view that the order passed in the Writ petition suffers from error apparent on the fact of the records warranting exercise of review jurisdiction.”

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E 5.6 From the aforesaid it appears that the High Court has considered the review application as if it was an appeal against the order passed by the High Court in Writ Petition No.8606 of 2010. As observed hereinabove the same is wholly impermissible while deciding the review application. Even if the judgment sought to be reviewed is erroneous the same cannot be a ground to review the same in exercise of powers

F under Order 47 Rule 1 CPC. An erroneous order may be subjected to appeal before the higher forum but cannot be a subject matter of review under Order 47 Rule 1 CPC.

G 6. In view of the above and for the reasons stated above and applying the law laid down by this Court on Order 47 Rule 1 read with Section 114 CPC, we are of the opinion that in the present case while allowing the review application the High Court has exceeded in its jurisdiction and has exercised the jurisdiction not vested in it under Order 47 Rule 1 read with Section 114 CPC and therefore the impugned judgment and order passed by the High Court allowing the review application and setting aside the order dated 03.03.2007 passed in Writ

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Petition No.8606 of 2010 is unsustainable and the same deserves to be quashed and set aside. A

6.1 As the Contempt Petition has been dismissed by the High Court on setting aside the order dated 03.03.2017 passed in Writ Petition No.8606 of 2010, on setting aside the order passed in Review Petition and consequently restoring the order dated 03.03.2017 passed in Writ Petition No.8606 of 2010 the dismissal of the contempt petition is to be set aside and the matter is to be remitted to the High Court to decide the same afresh in accordance with law and on its own merits. B

6.2 Similarly the order dismissing the Writ Petition (MD) No.14847 of 2017 and Writ Petition (MD) No.16256 of 2017 is also to be quashed and set aside and the said writ petitions are to be remanded to the High Court to decide the same afresh in accordance with law and on its own merits. C

7. In view of the above and for the reason stated above, civil appeal arising out of the impugned judgment and order dated 29.06.2021 in Review Petition (MD) No.21 of 2017 is allowed and the same order is hereby quashed and set aside and the judgment and order dated 03.03.2017 passed in Writ Petition (MD) No.8606 of 2010 is hereby restored. D

Consequently the remaining appeals arising out of the dismissal of the Writ Petition (MD) No.14847 of 2017 and Writ Petition (MD) No.16256 of 2017 and the dismissal of the Contempt Petition (MD) No.1109 of 2017 are also allowed and the said orders are hereby quashed and set aside and the Writ Petition (MD) No.14847 of 2017 and Writ Petition (MD) No.16256 of 2017 and the Contempt Petition No.1109 of 2017 are remitted back to the High Court to decide the same afresh in accordance with law and on its own merits for which this Court has not expressed anything in favour of the either parties. E F

Present appeals are accordingly allowed to the aforesaid extent. In the facts and circumstances of the case there shall be no orders as to costs.