so far as it lays down the opposite of this proposition, has not been overruled by the Full Bench case in *Seeni Nadan* v. *Muthuswamy Pillai*(1). I hold therefore that the lower Court has no jurisdiction to sell the property in execution, and that the sale cannot therefore go on.

I would set aside the order of the learned Judge and direct that the sale be stayed. The appellant will get his costs in this appeal and C.M.A. (one vakil's fee).

The C.M.A. No. 363 of 1926 is also allowed, and the order for sale is cancelled. The E.P. No. 25 of 1925 of the Sub-Court will be regarded as an application to transmit for execution to the Court having jurisdiction to sell and will be dealt with by that Court as such. No order necessary on C.M.P. No. 300 of 1927.

JACKSON, J.—I agree and have nothing to add.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Odgers and Mr. Justice Curgenven.

SRINIVASA AYYANGAR (PLAINTIFF AND FIRST RESPONDENT), APPELLANT,

1927, March 3.

v.

THE OFFICIAL ASSIGNEE, MADRAS, AND 2 OTHERS (DEFENDANTS, 1, 3 AND 4 PETITIONERS AND RESPONDENTS, 2 AND 3), RESPONDENTS.*

O. XLIII, r. (1) *(w)—O. XLVII, r. 7—Sec.* 115, *Civil Procedure Code—Appeal—Order granting review on ground of new evidence—Order not stating that the new evidence was important—Appealability of—Revision of.*

Although Order XLIII, rule (1) (*w*) of Civil Procedure Code allows an appeal against an order under rule 4 of Order XLVII granting an application for review, yet, the Order XLIII,

(1) (1919) I.L.R., 42 Mad., 821.

* Civil Miscellaneous Appeal No. 41 of 1927.

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rule (1) (*w*) is subject to the restrictions and limitations placed by Order XLVII, rule 7. Hence no appeal lies against an order granting review if the appeal is not on any of the grounds mentioned in Order XLVII, rule 7.

If a Judge grants a review on the ground of discovery of new matter or evidence, the fact that he does not state in the order granting the review that the new matter is important within the meaning of Order XLVII, rule 1, is no ground for revising the order under section 115, Civil Procedure Code.

APPEAL against the order of the District Court of West Tanjore, dated 22nd December 1926, and passed in O.P. No. 116 of 1926 in O.S. No. 14 of 1925.

The facts are given in the judgment.

N. Sivaramakrishna Ayyar for appellant.

C. A. Seshagiri Sastri and *N. Swaminadhan* for respondents.

JUDGMENT.

ODGERS, J.

ODGERS, J.—This is an appeal against the order of the learned District Judge of West Tanjore and also an application to convert S.R. No. 3185 of 1927 into a Civil Revision Petition. The suit O.S. No. 14 of 1925 was brought by the plaintiff in *forma pauperis* praying that a certain sale deed by the fourth defendant (who is the father of the plaintiff) in favour of the second defendant may be declared inoperative and invalid and not binding on the plaintiff. The second defendant became insolvent and his estate was vested in the Official Assignee of Madras. The suit proceeded and a decree was made in favour of the plaintiff. In that state of things the Official Assignee of Madras applied for a review of judgment on the ground of the discovery of new and important matters of evidence which had come to light after judgment had been pronounced. These new matters are two letters marked A and B which have been placed before us, the first from P.W. 3

to the second defendant, and the latter a similar letter from P.W. 1. The order of the learned Judge allowed the review and in the course of it he has stated that "under the circumstances stated by the Official Assignee in his affidavit I think the documents now produced have to be considered in evidence" and he continued, "What bearing they have on the questions involved in the suit is another matter." It is not contended before us on behalf of the plaintiff who is seeking to impugn this order of the learned Judge that the matter is not new or that the Official Assignee could have discovered it previously or anything of that sort. The learned District Judge's order is attacked simply and solely on the ground that he has not found that the matter is important as required by Order XLVII, rule 1, Civil Procedure Code. An argument of considerable length has been addressed to us on the question as to whether a matter of this sort is appealable. In other words the conflict (which from the decisions of this Court appears to have lasted for some time) between the provisions of Order XLIII, rule 1 (*w*) and Order XLVII, rule 7 of Civil Procedure Code again appears in the case before us. The learned vakil for the appellant presses upon us that although rule 7 (*b*) of Order XLVII says that an order granting the application may be objected to on the ground that it is in contravention of rule 4, sub-rule (2), we must read into the sub-rule everything after sub-clause (*c*) of rule 1. In other words, this must be imported into sub-rule (2) of rule 4 to form a condition precedent before the Court is at liberty to form an opinion that the application for review should be granted. It will be easily seen that this is only another way of saying that an order under rule 1 is appealable by implication. As against this we have the precise and definite provisions of rule 7 which allows an appeal under certain

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conditions and to an extent limited to certain matters and it seems to me that there is abundant authority in this Court for holding not that you are to take the general provisions of Order XLIII, rule (*w*), and say that they dominate the provisions of rule 7, Order XLVII but to the exactly contrary effect, viz., that the provisions of Order XLIII, rule (*w*) are to be read subject to the provisions of Order XLVII, rule 7. For instance, there is the case of *Tholan* v. *Kunhikutty*(1), where it is clearly laid down that an order granting a review can be appealed against only on one of the grounds set out in Order XLVII, rule 7. The question was argued at length on the opposition of Order XLIII, rule 1 (*w*) to Order XLVII, rule 7. *Srinivasa Ayyar* v. *Nataraja Ayyar*(2), is to the same effect and *Maduru Brahmayya* v. *Vedula Vellamma*(3). This body of authority seems to me to be sufficient to show that the matter is not appealable. The case of *Ramanadhan Chetti* v. *Narayanan Chetti*(4), has been quoted *contra*, but the learned Judges evidently entertained some doubt as to the sustainability of their view because they say "should this view not be correct, it must be held that the Court had power to revise" and that is really the next question that arises here.

It is said that we ought to interfere in revision with the order of the learned Judge because the order as it stands is not in accordance with law. Our attention has been called to the case in *Brown* v. *Dean*(5), which was a case arising out of section 93 of the County Courts Act and the question was as to the grounds on which a County Court Judge may order a new trial. The learned Lord CHANCELLOR said that where the ground is

(1) (1913) 24 M.L.J., 93. (2) (1915) 2. L.W., 366.
(3) (1916) 31 M.L.J., 509. (4) (1904) I.L.R., 27 Mad., 602.
(5) (1910) A.C., 373.

the alleged discovery of new evidence it must at least be such as is presumably to be believed and if believed would be conclusive. That opinion was not concurred in by Lord SHAW or rather the learned Lord refused to go the whole length of the proposition of the Lord CHANCELLOR. It is a grave question whether, in a matter of this sort, where an order allows a review and defers consideration of the new evidence and the arguments thereon to a future day a Court is called upon to see that the evidence if believed would be conclusive. I cannot say that this has been laid down and if it has been laid down by the House of Lords then I would say that it is not a decision binding on us and not a matter in connexion with reviews such as we have to deal with here. The real question is, assuming we can interfere in revision under section 115, as I think we can, are we satisfied that the order of the learned Judge is not really in accordance with law simply on the ground that he did not find that the new matter was important. It has been pointed out in one of the cases cited above, a Judge is not likely to entertain a review of his own judgment unless he is *prima facie* satisfied that the new matter *is* important, and it seems to me from a perusal of these documents that they may well be of such importance as to merit consideration in conjunction with the other evidence on a review of the learned Judge's decision. The plaintiff claims that the documents simply go to re-establish the position in which he stands as the decree-holder. On the other side it is said that they will go to demolish the decision arrived at by the learned Judge that there was no financial pressure on this family of the fourth defendant at the time when he sold the property to the second defendant. I think that is what the learned Judge meant when he said "what bearing they have on the questions involved in

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the suit is another matter." However that may be, it is of course a matter with which we are not concerned at present. There is no question that the matter is new and I think we may say from a perusal of the documents that the matter is probably important. Are we to exercise our discretion in favour of the appellant-petitioner and allow a revision of the Judge's order simply because it is not said in so many words that the matter is important? It seems to me that we should not do so. The result will be the same whether we direct the learned Judge to revise his order by putting in the word "important" because there can be no doubt to my mind that he does consider the matter important as he has ordered review of his own judgment, or, if we dismiss the Revision Petition the matter will go on and be investigated with the aid of the new evidence. It seems to me, therefore, there is really no point in interfering in this case in revision and I would dismiss both the applications on the ground of non-maintainability for the reasons above stated.

The appeal will be dismissed with costs. The petition to convert the appeal into a Civil Revision Petition will be dismissed without costs.

CLERGENVEN, J.—I agree.

N. R.