



C.R.P.Nos.1576 & 1005 of 2019

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.Nos.1576 & 1005 of 2019
and
C.M.P.Nos.10332 & 6665 of 2019

C.R.P.No.1576 of 2019

Sakthivel Murugan

...Petitioner

Vs.

1.Murugavalli

K.Duraiswamy (died)

2.K.Ramakrishnan

3.Srinivasan

Bakiyam (Died)

4.Saraswathi

5.Kamala

...Respondents

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., against the fair and final order dated 19.11.2018 passed by the learned District Munsif, Udumalpet in E.A.No.28 of 2018 in E.P.No.5 of 2008 in O.S.No.130 of 2005.



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For Petitioner : Mr.L.Mouli
For Respondents : Mr.N.Umapathy for R1
R2-Died
R3 and R5 - served
R4 - Died

C.R.P.No.1005 of 2019

K.Duraiswamy (Died)

Sakthivel Murugan

...Petitioner

Vs.

1.K.Ramakrishnan
2.Srinivasan

Bakiyam(Died)

3.Saraswathi
4.Kamala

...Respondents

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., against the fair and final order dated 19.11.2018 passed by the learned District Munsif, Udumalpet in E.P.No.5 of 2008 in O.S.No.130 of 2005.

For Petitioner : Mr.L.Mouli
For Respondents : R1-served
R2 & R3-No appearance
R4-served



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COMMON ORDER

This revision, which has been filed against the order passed in

E.A.No.28 of 2018 in E.P.No.5 of 2008 in O.S.No.130 of 2005 on the file of the District Munsif Court at Udumalpettai. O.S.No.130 of 2005 was filed by one K.Duraiswamy for recovery of possession of property as against five defendants. The said suit was decreed by a judgment and decree dated 20.06.2006. In order to execute the decree, Duraiswamy filed E.P.No.5 of 2008. Pending the execution proceeding, Duraiswamy executed a registered Will dated 05.10.2007.

2.As per the registered Will, he had given life estate from the schedule mentioned property in favour of his wife, D.Neelaveni and after her life time to his son, Sakthivel Murugan. Subsequently, Duraiswamy passed away. Consequently, Sakthivel Murugan filed an application for the purpose of impleading himself as a decree holder to the proceeding. The said application was allowed and Sakthivel Murugan was impleaded as a legal representative of the deceased Duraiswamy.

3.Duraiswamy had another child by name, Murugavalli.



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Murugavalli filed an application in E.A.No.28 of 2018 stating that the judgment debtors had handed over possession to her and therefore, the decree has been satisfied. This application was filed under Section 47 r/w. Order 21 Rule 97 of C.P.C. The said application was allowed against which the present revision has been presented.

4.Heard Mr.L.Mouli and Mr.N.Umapathi, learned counsel appearing for the respective parties and perused the records.

5.The relationship between the parties is not in dispute. Duraiswamy had one wife, Neelaveni and three children namely, Sakthivel Murugan, Murugavalli and Shanmugavalli. He had executed a Will in favour of his son to continue with the execution proceedings. The relevant portion of the Will reads as follows:-

மேற்படி சுவாதீன உத்தரவு எனக்கு
கிடைத்தவுடன் இதன் கீழ்க்கண்ட தார்க வீடு, இடம்
வகையராச் சொத்துக்களை நான் என் ஆயுள் வரை
அனுபவித்து வந்து என் ஆயுளுக்குப்பின் என் மனைவி
திருமதி.D.நீலவேணி என்பவள் அடைந்து மேற்படியான



மேற்படி சொத்துக்களை தன் ஆயுள்வரை எவ்வித பந்தக பராதீனங்களுக்கும் உட்படுத்தாமல் அதில் வரும் வரும்படியை மட்டும் அனுபவித்துவந்து மேற்பயாள் ஆயுளுக்குப்பின் இதன் கீழ்க்கண்ட சொத்துக்களை என் ஒரே மகன் திரு.D.சக்திவேல் முருகன் என்பவன் அடைந்து மேற்படியான் மேற்படி சொத்துக்களை தனிப்பட சர்வ சுதந்திர பாத்தியங்களுடன் தானாதி விநியோக விற்கிரையங்களுக்கு தகுதியாய் ஆண்டனுபித்துக்கொள்ள வேண்டியது.

This shows that during the life time of the father, the civil revision petitioner was permitted to succeed to & continue with the execution proceedings post his death by the decree holder. Therefore, the application filed by Sakthivel Murugan to implead himself as a party to the proceeding had been rightly allowed.

6.Now turning to the dispute, which has been raised by Murugavalli, she wants the *inter se* dispute between the legal representatives of the decree holders to be decided under Section 47. A bare perusal of Section 47 would show, it is a dispute relating to discharge and satisfaction of a decree between the judgment debtor and the decree holder.



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The Court is not empowered to decide any dispute *inter se* the decree holders.

7. In the light of the order impleading Sakthivel Murugan to the proceeding, Murugavalli is a third party. A third party cannot maintain an application under Section 47. If I were to treat the application as one under Order 21 of Rule 97, even then, Murugavalli cannot make out an application because a bare reading of the provision shows, only the decree holder or an auction purchaser, can take out an application under Order 21, Rule 97. Murugavalli is neither. The dispute she raised on the validity of the Will dated 05.10.2007 cannot be decided by the Executing Court but should have been tried by a separate suit. The executing Court does not have the jurisdiction to decide the question. Merely because the executing Court has recognised the “Will” and permitted Thiru.Sakthivel to continue the proceedings, it does not mean that Murugavalli cannot challenge the same in a regularly presented suit. He continues the proceeding only as a representative of the deceased, representing the estate.

8. The Court below erroneously recorded satisfaction by the



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judgment debtor handing over possession to the third party, Murugavalli. I look at this through another angle. If Murugavalli had taken possession of the property from the judgment debtors, she becomes a legal representative of the judgment debtors and cannot oppose the decree on the ground that she is now been possession of the property handed over to her by the judgment debtors. In such a situation, neither Section 47 is maintainable nor a petition under Order 21 Rule 97 is maintainable. Therefore, E.A.No.28 of 2018 ought to have been dismissed.

9.It is admitted by both sides that Murugavalli took out an application to implead herself as legal representatives of the decree holders but did not prosecute the same. I recollect the judgment of the Supreme Court in ***Barkat Ali Vs. Badri Narain*** reported in (2008) 4 SCC 615, which says *res-judicata* applies between two stages in the same proceeding. Sakthivel Murugan having been recognized as the legal representative of Duraisamy, that would operate as *res-judicata* in the subsequent proceeding and rightly the application of Murugavalli had been returned. Therefore, Murugavalli's capacity as a person, who has taken possession from the



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judgment debtors should be treated only as a legal representative of the judgment debtor and she is answerable to the decree.

10. Accordingly, these Civil Revision Petitions are allowed. The order passed by the Court below in E.A.No.28 of 2018 dated 19.11.2018 is set aside. E.P.No.5 of 2018 is restored on to the file of the learned District Munsif at Udumalpettai. The Court below shall execute the decree and hand over the same to the decree holder as expeditiously as possible, in any event within a period of three months from the date of restoration. Reserving her right to challenge the “Will” in a suit claiming a share in the property, these Civil Revision Petitions are allowed. No costs. Consequently, conencted miscellneous petitions are closed.

30.08.2023

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Internet: Yes/No

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Speaking/Non-speaking order

Nuetral Citation : Yes/No

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To:-
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The District Munsif Court,
Udumalpet.



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V.LAKSHMINARAYANAN, J.

KKN

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