

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.4489 of 2015 &

M.P.No.1 of 2015

Perumal Gounder

... Petitioner

v.

1.Vetriveeramani
2.Elangovan
3.Pandian
4.Palani Raju
5.Jayabharathi
6.Sandaravadhani
7.Ethiraj
8.Kannan
9.Vasanthi
10.Krishnan
11.Mahalakshmi
12.Kalyanasundaram
13.Chitra
14.Lakshmi
15.Arundhathi
16.Raghunathan
17.Mayavathi
18.Savithri
19.Sadasiva Chettiar
20.Ramachandiran
21.Thirumalai
22.Govindaraj
23.Mahalakshmi

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 13.10.2015 made in E.A.No.116 of 2014 in E.P.No.57 of 2013 in O.S.No.112 of 1991 passed by the Principal Subordinate Judge, Puducherry.

For Petitioner : Mr.R.Thiagarajan

ORDER

Challenging the order passed in E.A.No.116 of 2014 in E.P.No.57 of 2013 in O.S.No.112 of 1991 on the file of Principal Subordinate Court, Puducherry, the petitioner, who is the third party to the proceeding, has filed the above Civil Revision Petition .

2. Pursuant to the preliminary decree passed in O.S.No.112 of 1991 on the file Principal Subordinate Court, Puducherry, the plaintiff filed final decree application in I.A.No.1194 of 2005 in O.S.No.112 of 1991. The Trial Court passed a final decree on 28.10.2010 . Pursuant to which, the plaintiff filed an Execution Petition in E.P.No.57 of 2013. In the said Execution Petition, the revision petitioner filed an application in E.A.No.116 of 2014 under Order 21, Rule 26 of CPC to stay all further proceedings including the warrant of delivery in E.P.No.57 of 2013.

3. The learned counsel appearing for the petitioner submitted that the

revision petitioner is the son of the deceased 6th defendant. However, the revision petitioner has not filed any application to get himself impleaded in the proceeding as the legal representative of the deceased 6th defendant. Instead of filing any application to get himself impleaded, the revision petitioner straightaway filed an application under Order 21, Rule 26 of CPC to stay all further proceedings in the Execution Petition. The learned counsel, in support of his contention, relied upon a judgment reported in **AIR 1990 Orissa 36 (Saria Bewa v. Balaram Puhan and others)** wherein, the Division Bench of Orissa High Court held that final decree without substitution of legal representative of deceased party is a nullity.

4. In the case on hand, the legal representative is a third party to the proceeding and hence, even without impleading himself as a party to the proceeding, the third party-petitioner cannot question the validity of the decree.

5. In the Execution Petition, the Execution Court declined to stay the proceeding stating that in terms of Order 22, Rule 6 of CPC there shall be no abatement for the reason of death of either party, between the conclusion of the hearing and the pronouncement of the judgment. Further, the Execution Court observed that the judgment may in such case be pronounced notwithstanding the death and such judgment shall have the same force and effect as if it has been pronounced before the death took

place.

6. As already stated, the suit is of the year 1991 and even after a lapse of nearly 25 years, the parties are not in a position to enjoy the fruits of the decree. The Execution Court taking into consideration all these aspects, rightly dismissed the application.

7. In these circumstances, I do not find any error or irregularity in the order passed by the Execution Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

26.11.2015

Index : Yes/No

Rj

To

The Principal Subordinate Court,
Puducherry

M. DURAISWAMY,J.,

Rj

C.R.P.(NPD)No.4489 of 2015 &
M.P.No.1 of 2015

26.11.2015