

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.565 of 2016

and

C.M.P.Nos.2865/2016 & 4720/2016

Ambuja Narasimhan
1.R.Narasimhan
2.Priya Narasimhan
3.Vijaya Narasimhan
4.Latha Narasimhan
5.R.Prabhavathi
6.R.vinoth

... Petitioners

vs.

Maxworth Home Ltd.
Rep. by its Authorised Signatory
Mr.U.Sivakumar
No.50, Maxworth Nagar
Sunnambu Kolathur
Chennai 600 117

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order of the Principal District Munsif, Alandur dated 07.01.2016 made in I.A.No.138 of 2014 in O.S.No.417 of 2013.

For Petitioners : Mr.Rathina Asohan

For Respondent : Mr.N.Baskharan

ORDER

This civil revision petition has been filed under Article 227 of the

Constitution of India against the order of the trial Judge, namely the Principal District Munsif, Alandur dated 07.01.2016 made in I.A.No.138/2014 in O.S.No.417/2013 on the file of the said court. The said suit came to be filed against one Ambuja Narasimhan. On the date of presentation of the plaint itself, the said Ambuja Narasimhan was no more. Thereafter, the plaintiff filed the above said application I.A.No.138/2014 under Order I Rule 3 CPC praying for impleadment of the revision petitioners herein as defendants 2 to 7 in the said suit. The application was resisted on the ground that the suit filed against a dead person was non-est and also on the ground that the cause of action did not survive the death of Ambuja Narasimhan.

2. The learned trial Judge, after hearing, upheld the contention of the plaintiff, rejected the objection raised by the proposed parties, who are the revision petitioners and allowed the said application for impleadment. The said order dated 07.01.2016 is challenged in the present civil revision petition.

3. Respondent has entered appearance through counsel. The arguments advanced by Mr.Rathina Asohan, learned counsel for the petitioners and by Mr.N.Baskharan, learned counsel for the respondent are heard. The certified copy of the impugned order and copies of the other documents produced in the form of typed set of papers are also perused.

4. It is the contention of the learned counsel for the petitioners in the revision that the order of the trial court shall be unsustainable on the following grounds:

(i) The suit having been filed against a dead person is a nullity and it cannot be allowed to be resurrected by permitting the plaintiff to implead the revision petitioners as party-defendants;

(ii) The suit is one for a bare injunction on the sole cause of action that some persons, on behalf of Ambuja Narasimhan, made an attempt to trespass into the property and hence Ambuja Narasimhan should be enjoined from doing so. As the cause of action for such an injunction is personal against Ambuja Narasimhan, the cause of action will not survive the death of Ambuja Narasimhan. In fact on the date of the filing of the suit itself there was no cause of action and the cause of action was illusory.

5. Per contra, it is the contention of the learned counsel for the respondent that the respondent/plaintiff was not aware of the death of Ambuja Narasimhan at the time of filing of the suit and that though normally a suit against a dead person may be a nullity, if the plaintiff comes forward with a plea of absence of knowledge of death immediately after he gets such knowledge, for substitution of LRs, the same should be allowed. In support of his contention, learned counsel for the respondent/plaintiff relies on a judgment of the Supreme Court in ***Karuppaswamy and others vs. R.Ramamurthy*** reported in ***AIR 1993 Supreme Court 2324***.

6. This court paid its anxious consideration to the above said submissions made on both sides.

7. The application for impleadment came to be filed under Order I Rule

3 CPC. Order I Rule 3 CPC simply says who may be joined as defendants while filing the suit. For better appreciation Rule 3 is reproduced hereunder:

3. Who may be joined as defendants.- *All persons may be joined in one suit as defendants where -*
(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and
(b) if separate suits were brought against such persons, any common question of law or fact would arise.

The said rule is quoted for the simple purpose of showing that the petition has not been filed under proper provision. If at all the respondent herein/plaintiff wanted to implead a third party as a party-defendant, the respondent/plaintiff should have invoked Rule 10(2) of Order I or else Section 151 of the Code of Civil Procedure for substitution of the living person, when the suit has been filed against a dead person without having knowledge of his death.

8. Above all, the respondent/plaintiff has chosen to file the suit to seek an injunction against Ambuja Narasimhan, based on the averment as if her men made an attempt to trespass into the property. The said relief shall be only personal against Ambuja Narasimhan. Even if Ambuja Narasimhan was alive on the date of filing of the suit, on her death, the cause of action to seek a prohibitory injunction would not survive. If at all any other person makes an attempt to trespass into the suit property or to disturb the possession of the respondent/plaintiff or the respondent/plaintiff apprehends such a trespass or interference, then it will give rise to a new cause of action against such person.

Suppose, it is a case in which the respondent/plaintiff had sought a declaration of title and injunction, on the death of Ambuja Narasimhan, the cause of action can be said to survive the death of Ambuja Narasimhan, whereupon her LRs or any one claiming through her can be made party-defendants.

9. The claim of the respondent/plaintiff is that the respondent/plaintiff is entitled to be in possession of the suit property by virtue of a Development and Construction Agreement. If at all the respondent/plaintiff filed the suit for specific enforcement of its right under the said agreement, then as the legal representatives of the deceased Ambuja Narasimhan, the petitioners can be impleaded as the cause of action for such enforcement does not die with Ambuja Narasimhan and it survives her death. The cause of action was not available even on the date of filing of the suit, since Ambuja Narasimhan was no more. The cause of action would not have survived the death of Ambuja Narasimhan even if she was alive on the date of suit. As such, the suit itself would have stood abated under Order XXII Rule 1 CPC. In view of the fact that the cause of action for the suit did not survive the death of Ambuja Narasimhan, the order of the trial court impleading the revision petitioners as party-defendants cannot be sustained.

10. So far as the judgment relied on by the respondent/plaintiff is concerned, it was a suit by creditor on the basis of a promissory note for recovery of money wherein, the legal heirs were held liable to the extent of the

properties of the deceased held by them. That was the reason why the Supreme Court in the said case held that the mistake in filing of the suit against a dead person could be rectified by substituting or impleading the legal heirs or legal representatives, as the case may be. In that case, cause of action for the suit did survive the death of the borrower. The question of the cause of action dying with the person against whom the case was filed did not arise there and in that context alone the said judgment should be understood.

11. Here is a case in which the suit has been filed against a particular person against a particular person based on a personal cause of action against such person. Such cause of action does not survive the death of the person. Hence the impleadment of the petitioners in the bare injunction suit is not proper. The order of the trial court deserves to be interfered with and set aside. In view of this order the suit shall stand abated. The abatement shall be recorded by the court below.

In the result, the civil revision petition is allowed. The order of the Principal District Munsif, Alandur dated 07.01.2016 made in I.A.No.138 of 2014 in O.S.No.417 of 2013, which is impugned in this civil revision petition, is set aside. Consequently, the trial court shall record abatement of the suit. However, there shall be no order as to cost. Consequently, the connected miscellaneous petitions are closed.

17.03.2016

Index : Yes
Internet : Yes
asr

To

The Principal District Munsif, Alandur

P.R.SHIVAKUMAR, J.

asr/-

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