



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2016

CORAM:

THE HONOURABLE MS. JUSTICE V.M.VELUMANI
C.R.P (MD) No.421 of 2016 (NPD)

WEB COPY

- 1.Gunamony
- 2.Rosily
- 3.Anilkumar
- 4.Sunilkumar
- 5.Ginilkumar
- 6.Swarnamma
- 7.Sheeja
- 8.Shiji
- 9.Sheeba
- 10.Sherli
- 11.Shiju

..Appellants/ Petitioners/Petitioners

Vs.

- 1.Lysamma Nadathi
- 2.Ramadhas
- 3.Kamala Bai
- 4.Vijaya Devi
- 5.Radha Devi
- 6.Sarojini
- 7.Baby
- 8.Ravi
- 9.Sumithra
- 10.Vasantha
- 11.Latha
- 12.Selvaraj
- 13.Russel Raj
- 14.Ponnayyan
- 15.Rosammal
- 16.Dharmaraj

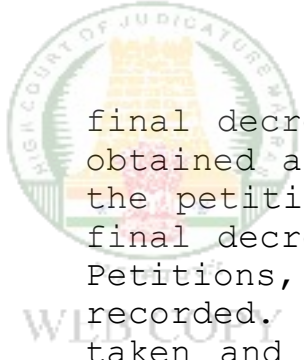
.. Respondents/Respondents/Respondents

PRAYER: Civil Revision Petition is filed, under Section 115 of Civil Procedure Code, to set aside the order and decretal order, dated 15.10.2015 of the learned Subordinate Judge, Kuzhithurai made in I.A.No.490 of 2014 in A.S.No.120 of 2014, on his file,

For Petitioner : Mr.K.N.Thampi

ORDER

The petitioners are the appellants in A.S.No.120 of 2014. The respondents are the respondents in I.A.No.490 of 2014 praying for stay of Execution Proceedings on the ground that appeal has been filed against the



final decree. According to the petitioners, final decree has been obtained against the dead persons. The respondents contended that the petitioners did not file any counter and participated in the final decree proceedings. Except in one E.P., all other Execution Petitions, possession have been taken and the same has been recorded. Even in the present Execution Petition possession is taken and it was posted in the next day for recording the same. The learned Judge considering all the materials on record, dismissed the I.A.No.490 of 2014. Against that, the present Civil Revision Petition is filed.

2.The learned counsel for the petitioners contended that the learned Judge erred in holding that the petitioners did not participate in the final decree proceedings. On the other hand, the petitioners contested the same and filed an appeal. The learned Judge erred in holding that, if appeal filed by the petitioners is allowed they can get restitution as per Section 144 of C.P.C., The learned Judge failed to see in any event execution petition for possession has not been recorded. He further contended that the final decree passed against the dead persons is nullity. Therefore, it cannot be executed and the petitioners filed an appeal against the first respondent, pending appeal, the petitioners prays for stay of execution petition. He also submitted that the fourth respondent died on 16.03.2015.

3.The learned counsel for the petitioner relied on the following Judgments:-

(i) (1982) 1 Supreme Court Cases 478 (Jangli and another vs. Deputy Director of Consolidation and others)

"Revision application decided in favour of respondents on the basis of a decree- At the time of passing the decree one of the parties had died and his heirs (appellants) had not been brought on record-Decree being thus null and void, held, the consolidation authorities not justified in relying upon it and not deciding the revision on merits.

II) (1975) Madras Law Journal 376 (S.Sundaresa Mudaliar vs. Mayavaram Financial Corporation ltd., and others)

"A child fund brought a suit against the borrower, the first defendant and the surety, the second defendant. A consent decree was passed on 10th February, 1971. But earlier to this decree, on 12th January, 1971 itself the surety had died. Subsequent to the consent decree the legal representatives of the surety were brought on record by an interlocutory application and the consent decree was made binding on them. This was challenged by the legal representatives.

Held: The proper procedure would be to implead the legal representatives and to afford them an opportunity to contest the suit. But the Court below had not adopted that procedure. Therefore, the order of the Court was liable to



be set aside and the matter remanded."

4.I have heard Mr.K.N.Thambi, learned counsel appearing for the petitioners and also carefully perused the entire materials on record.

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5.From the records, it is seen that the Execution Petition has been filed to execute the final decree. According to the petitioners, they have filed an appeal in A.S.No.120 of 2014. The lower appellate court did not pass any order of stay of final decree. In the circumstances, the execution Court cannot go beyond the final decree. The possession has been taken and it is posted for recording the same. Considering these facts, the learned Judge has correctly dismissed the application filed by the petitioners. There is no irregularity or illegality in the said order warranting interference by this Court.

6.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/

Assistant Registrar (C.O.Dept)

/True Copy/

Sub Assistant Registrar

To
The Subordinate Judge,
Kuzhithurai.

+One CC to Mr.K.N.Thampi, Advocate in Sr.No.13833

CN/GJB-DP/23.03.2016/3P-3C

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