

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 02.09.2016

Pronounced on 04.01.2017

DATED: 04.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.4560 of 2011
and
M.P.No.1 of 2011

N.Natarajan

.. Petitioner

Vs.

N.Chidambara gounder

..Respondent

Prayer: Civil Revision Petition filed under Section 115 of CPC, against the fair and decretal order dated 11.07.2011 made in I.A.No.514 of 2010 in I.A.No.456 of 2005 in O.S.No.159 of 2005, on the file of the District Munjsif-cum-Judicial Magistrate, Perundurai.

For Petitioners : Mr.N.Manokaran

For Respondent : Mr.A.K.Kumarasamy

O R D E R

Heard Mr.N.Manokaran, learned counsel appearing for the petitioner and Mr.A.K.Kumarasamy, the learned counsel appearing for the respondent.

2.A perusal of records show that the respondent herein is the plaintiff in O.S.No.159/2005 before the District Munsif cum Judicial Magistrate Court, Perundurai, has filed the said suit against the respondent herein and others for the relief of Partition of 1/14th share and for permanent injunction against the defendants 7 to 9. The said suit was decreed and a Preliminary Decree for partition was granted by Judgment and Decree dated 27.10.1994.

3.It is the case of the petitioner herein that he was added as 18th defendant in the above said suit. During the pendency of the said suit, the 3rd defendant namely Karuppana Gounder died on 27.4.1992 and the 6th defendant namely Mottaiya Gounder died on 26.04.2001. Though the defendants 3 & 6 died long back, the plaintiff/respondent herein did not take steps to bring the legal heirs of the deceased

defendants. After the Preliminary Decree for partition, the respondent herein filed I.A.No.456/2005 against 20 respondents including the dead persons namely the respondents 3 & 6. Admittedly the 3rd respondent Karuppana Gounder and the 6th respondent Mottaiya Gounder died on 27.4.1992 and 26.4.2001 prior to the filing of the final decree application. The final decree application was filed in the year 2005.

4.It is the further case of the petitioner herein that he has also filed a memo before the lower court on 09.04.2010 stating that the respondents 3 & 6 were died on 27.4.1992 and 26.04.2001. Even thereafter the respondent herein failed to take steps to bring the legal representatives of the deceased respondents 3 & 6. But the lower court has appointed advocate commissioner to measure the suit property and also ordered police protection on 9.4.2010 in the memo filed by the Learned Advocate Commissioner. Therefore the petitioner herein filed I.A.No.514/2010 seeking to stay all further proceedings of I.A.No.456/2005 in O.S.No.159/2005 till the legal heirs of the deceased respondents 3 & 6 are brought on record.

5.Per contra the Learned Counsel for the respondent herein

argued that the petitioner herein has no locus standi to file the present application in I.A.No.514/2010 when the legal heirs of the deceased defendants 3 & 6 have kept quiet while the advocate commissioner has visited the suit property, why the petitioner herein is interested as bringing them as party. The learned counsel further contended that the defendants 1 to 6 were added in the suit only as a formal party and no relief is asked against them in the suit. It was further contended that the defendants 3 & 6 have remained ex-parte in the suit and in the final decree application and they have died after the decree.

6.On considering the rival submissions of the parties and upon perusing the records, the Learned District Munsif was pleased to dismiss the application in I.A.No.514/2010 filed by the petitioner herein on the ground that after the preliminary decree only the 3rd and 6th defendants were died and therefore there is no necessity to take steps for the parties who were set ex-parte in the proceedings long back. The Learned Judge further held that the present petition is filed only to drag on the proceedings.

7.It is seen from the records that the lower court has committed

a factual error. Admittedly in this case, preliminary decree was passed on 27.10.1994. The 3rd defendant Karuppana Gounder died on 27.4.1992. But the Lower court has held that after the preliminary decree was passed only 3rd Defendant died. The said finding is factually wrong. The lower court further held that as if the defendants were set ex-parte in the suit and their legal representatives need not be brought on record in the final decree application. The Lower Court failed to consider the legal principal that any decree against the dead person is a nullity. Admittedly the 3rd and 6th defendant died before the filing of Final Decree application and therefore the respondent herein ought to have taken steps to bring the legal representatives of the deceased 3rd and 6th defendants. The summons sent to the respondents 3 and 6 by the lower court in the final decree application might have been returned with an endorsement that the respondents 3 & 6 were died. Thereafter the lower court ought to have directed the respondent herein to take steps to bring the legal representatives of the deceased respondents 3 & 6. But the lower court has not chosen to do so. The lower court also failed to direct the respondent herein to take steps, despite the memo filed by the petitioner herein.

8. Merely because of the Legal representatives of the deceased

defendants 3 & 6 kept quite at the time of inspection of the suit property by the Learned Advocate Commissioner, it doesn't mean that they have no objection to pass final decree. Further the legal representatives may not aware of the proceedings pending or the inspection of the property by the Learned Advocate Commissioner. If any order is passed in the final decree application without the knowledge of the legal heirs of the deceased defendants 3 & 6 which would affect their legal right over the suit property.

9.If any final decree is passed against the respondents 3 & 6, the decree passed against the dead person is a nullity and the same can't be executed. Further the Preliminary Decree itself is a nullity as against the 3rd defendant/3rd Respondent, since he died pending suit and therefore necessarily his legal heirs should have been brought on record in the suit itself. The Lower court has not at all considered the legal principle that any decree against the dead person is nullity.

10.At this Juncture, it is useful to refer the following decision reported in AIR 1999 SC 1484 = 1998 (5) SCC 567 in the case of Ashok Transport Agency – Vs – Awadhesh Kumar and Another, wherein the Hon'ble Apex Court held that the suit having been filed

against the dead person, the decree was a nullity and could not be executed. The said decision is squarely applicable to the present case on hand. In the present case, the respondent herein has filed the final decree application only after the death of the defendants 3 & 6. Therefore, as discussed above, final decree passed if any, will be a nullity and the same could not be executed.

11.As pointed out above, the lower court has not at all considered above said legal principles laid down by the Hon'ble Supreme Court and has not considered the case in a proper perspective manner. In the light of the discussion made supra, the order and decree passed by the lower court in I.A.No.514/2010 in I.A.No.456/2005 in O.S.No.159/2005 dated 11.07.2011 is hereby set aside and in the result I.A.No.514/2010 is allowed and I.A.No.456/2005 is stayed till the legal heirs of the deceased defendants 3 & 6 are bring on record to the said final decree application.

12.In fine the CRP is allowed. No costs. Consequently connected miscellaneous petition is closed.

04 .01.2017

Index:Yes

Internet:Yes
vs

M.V.MURALIDARAN, J.

VS

To

The District Munsif-cum-Judicial Magistrate,
Perundurai.

Pre-Delivery order made in
CRP(NPD)No.4560 of 2011
and
M.P.No.1 of 2011

04.01.2017

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