

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP (NPD) No.2270 of 2004

and

CMP.No.17289 of 2004

1.Raja

2.Parvathi

3.Vasantha

4.Jaya

5.Amutha

.. Petitioners/Defendants 2, 6 to 9

Vs.

1.Balambal

... 1st Respondent/Plaintiff

2.Devaraj

3.Annamalai

4.Deviga

5.Sathiya

.. Respondents 2 to 5/Defendants 3,4, 10 & 11

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the Fair Order and Decretal Order in REA.No.354 of 2002 in REP.No.5 of 1986 in O.S.No.904 of 1967 dated 28.06.2004 on the file of the Principal District Munsif, Thiruvannamalai.

For Petitioners : Mr.P.Rajendran

For Respondents : M/s.S.Jayasree (for R1)

No Appearance (for R2, R4 & R5)

R2 - Dismissed vide Court order

dated 23.07.2015

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O R D E R

This Civil Revision Petition is directed against an Order dated 28.06.2004 of the Learned District Munsif, Tiruvannamalai made in R.E.A.No.354 of 2002 in R.E.P.No.5 of 1986 in O.S.No.904 of 1967.

2.The short point for consideration in the present Civil Revision Petition is whether an amendment application seeking mutation of schedule of property is to be allowed in an application filed seeking civil arrest of the Judgment debtor.

3.It is seen that the respondent as plaintiff filed the above suit against one Venkatachala Udayar. The said Venkatachala Udayar suffered a Decree in the above suit. Whereupon the respondent filed an application in R.E.P.No.5 of 1986 for civil arrest and detaining of the defendant Venkatachala Udayar in failure to satisfy the Decree.

4.During the pendency of the above Execution application filed praying for Civil arrest said Venkatachala Udayar died and consequently the revision petitioners who are legal heirs of said Venkatachala Udayar were brought on record. In the said circumstance the respondent filed an amendment application under order VI, Rule 17 in R.E.A.No:354 of 2002 to cause amendment application as to property schedule in the above Execution Petition.

5.The said application was allowed by Trial Court vide impugned order herein holding that inclusion of properties at the hands of legal heirs of deceased judgment debtor has become essential and thereby allowed the amendment by including some properties vested with the revision petitioner and some third parties.

6.It is found that the revision petitioners contested the said application as not maintainable as it is their claim that amendment procedure envisaged in Order VI, Rule 17 of CPC is inapplicable for amending a Decree.

7.I heard Mr.P.Rajendran, learned counsel for revision petitioners and M/s.S.Jayasree, learned counsel for the 1st respondent and perused the records. No representation on behalf of the respondents 3, 4 and 5.

8.Though very many contentions are raised by either side, it is seen that the instant application was filed for civil arrest in case of failure to satisfy the Decree amount by the said Venkatachala Udayar and that after his demise the revision petitioners were brought on record.

9.It is further seen that though the Trial Court has rightly found that the above application for civil arrest is not maintainable against the revision petitioners, but chosen to allow the amendment.

10.In my considered opinion the said approach is erroneous and that the Execution Court having found that the main relief is not maintainable, the subsequent application seeking the relief of amendment, by amending the schedule of property is not maintainable.

11.In the result:

- (a) this Civil Revision Petition is allowed by setting aside the Order and Decree passed in R.E.A.No.354 of 2002 in R.E.P.No.5 of 1986 in O.S.No.904 of 1967, dated 28.06.2004 on the file of the learned Principal District Munsif, Tiruvannamalai;
- (b) the respondent/ decree holder is hereby given liberty to file separate Execution Petition against the Legal Heir of deceased judgment Debtor within a period of 30 days from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vs

To

The Principal District Munsif,
Tiruvannamalai.

2. The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.P.Rajendran, Advocate, S.R.No. 26276

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KJI (CO)
GN(03/12/2018)