



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.01.2017

CORAM:

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)Nos.130 to 133 of 2017

V.K. Seenivasan(died)

Petitioners in CRP.132/2017

1.Uma Maheshwari

2.Minor Varshashri

(minor rep. by natural guardian and
mother of 1st petitioner)

S.Ganesan(died)

.. Petitioners in CRP No.130,131,133/2017/LRs of
proposed 2nd Petitioner

Vs.

1.Vignesh,

...1st Respondent in all CRP's/1st Respondent/
1st Respondent/Petitioner/Plaintiff

2.Veluchamy

...2nd Respondent in all CRPs/2nd Respondent/
2nd Respondent/Respondent/Defendant

Prayer in all CRPs: Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the order and decreetal order dated 31.07.2014, passed in I.A.Nos.552 to 554 of 2012 and I.A.No.678 of 2011 in I.A.No.140 of 2011 in O.S.No.71 of 2011 respectively on the file of the Sub Court, Srivilliputur.

For Petitioners : Mr. S. Natarajan in all CRPs

ORDER

These Civil Revision Petitions are filed against the fair and decreetal order dated 31.07.2014, passed in I.A.Nos.552 to 554 of 2012 in I.A.No.678 of 2011 in I.A.No.140 of 2011 in O.S.No.71 of 2011 respectively and in I.A.No.678 of 2011 in I.A.No.140 of 2011 in O.S.No.71 of 2011 on the file of the Sub Court, Srivilliputur.

2. All the four Civil Revision Petitions are interlinked and are filed against the common order, dated 31.07.2014. The first respondent filed suit in O.S.No.71 of 2011, on the file of the Sub Court, Srivilliputur, against second respondent for recovery of money. He also filed I.A.No.140 of 2011 for attachment before Judgment of the items of property mentioned in the petition. Attachment before Judgment was ordered and effected. One V.K.



Seenivasan, filed I.A.No.678 of 2011, for raising attachment before the Judgment, claiming to be owner of the suit property. According to the said V.K.Seenivasan, the property originally belonged to one Sundararaj Nayackar and he, by the Will dated 08.06.1961 bequeathed the property to one Achammal, for her life time and after her death to V.K. Seenivasan. After the death of Sundararaj Nayackar, and Achammal, the said V.K. Seenivasan became owner. The respondents 1 and 2 colluded together filed O.S.No.71 of 2011 and obtained order of attachment of property before the Judgment, on the property belongs to V.K.Seenivasan, as though the property belonged to second respondent. The first respondent has no capacity to lend Rs.1,00,000/-, as he was only a student, at that time and he was not residing at Thiruvenkatam.

3. The first respondent filed counter and contended that second respondent is son of Sundararaj Nayackar and he is coparcener and alleged will dated 08.06.1961 is forged one. The said V.K. Seenivasan did not get any title by Will. The first respondent was carrying on Real Estate Business staying at Thiruvenkatam Village and the second respondent borrowed money to discharge his debt, for his medical expenses. The Application is filed only in collusion with second respondent.

4. Pending I.A.No.678 of 2011, said V.K. Seenivasan died. One Ganesan claiming to be the son of V.K. Seenivasan filed I.A.No.552 of 2012 to condone the delay 48 days in filing a petition to implead legal heirs of V.K. Seenivasan; I.A.No.553 of 2012 for impleading the Legal heirs of V.K.Seenivasan, I.A.No.554 of 2012 to restore I.A.No.678 of 2011 for setting aside the abatement. According to the said Ganesan, he is son of V.K.Seenivasan, who died on 14.07.2012. The said V.K.Seenivasan, by Will dated, 13.08.1998, bequeathed the suit property to said Ganesan and therefore, he has filed all the above applications .

5. The first respondent filed counter and denied all the averments and stated that Ganesan is not the son of V.K. Seenivasan or legal heir of V.K.Seenivasan. He died issueless. The alleged will is forged and fraudulent one. The claim petition filed by V.K.Seenivasan is personal one and if Ganesan has any claim over the suit property he has to file an independent claim petition.

6. The learned Judge elaborately considered all the materials on record and various litigation between V.K.Seenivasan and Veluchamy / second defendant and others. The learned Judge considering the fact that the suit decreed ex parte on 03.06.2011, dismissed all the applications giving reason for dismissal.

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7. Against the said order of dismissal, present Civil Revision Petitions have been filed.



8. Before, filing Civil Revision Petitions, Ganesan died and petitioners, who are legal heirs of said Ganesan have filed the Civil Revision Petitions and the cause title was accepted by order dated 05.01.2017 in CMP(MD).No.12562 of 2016 in CRP(MD)SR.No.10418 of 2015.

9. The learned counsel appearing for the petitioners submitted that the learned Judge erred in considering all the applications together. The learned Judge ought to have considered first only I.A.No.552 of 2012 for condoning the delay in filing a petition to implead the legal heirs of V.K.Seenivasan. Only if the learned Judge ordered the said application, he can consider other applications. If said application is dismissed, then consideration of other applications does not arise. The learned Judge failed to note that Ganesan is son of V.K.Seenivasan, through first wife Perammal, as admitted by the second wife of V.K.Seenivasan viz., Radhalakshmi. The learned Judge erred in holding that Ganesan ought to have filed claim petition in his personal capacity. The learned Judge ought to have seen that objections are no way connected with the suit property and by collusion, they have obtained an order of attachment before the Judgment. The learned Judge on assumption held that Will is not a genuine one.

10. The learned counsel appearing for the petitioners submitted that the learned Judge has no jurisdiction to go into merits of the applications, under Order 9 Rule 13 of CPC without disposing the application, under Section 5 of the Limitation Act and also submitted that Court held merits of the case cannot be decided, unless the delay is condoned and matter is taken up for hearing of condonation of delay.

11. He further contended that one Radhalakshmi wife of V.K. Seenivasan filed I.A.No.652 of 2014 in I.A.No.140 of 2011 on the file of the Sub Court, Srivilliputur and by order dated 22.01.2016, raised attachment in respect of all the properties, except Item Nos.22 and 23. Challenging that order, respondents filed two separate Civil Revision Petitions in CRP(MD).Nos.441 and 304 of 2016 and the both the civil Revision Petitions are dismissed by this court on 15.04.2016.

12. In support of his contention the learned counsel appearing for the petitioners relied on the Judgment reported in **AIR 1995 Gujarat 29 (Full Bench) (Municipal Corporation of Ahmedabad through the Municipal Commissioner Vs. Voltas Limited and etc.,)**.

13. I have heard the learned counsel appearing for the petitioner and perused the materials available on record.

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14. From the materials available on record, it is seen that



the first respondent filed suit in O.S.No.71 of 2011 for recovery of money against the second respondent and filed I.A.No.140 of 2011 for attachment before Judgment. In the said Interlocutory application, attachment before Judgment was ordered and attachment has been effected. One V.K. Seenivasan filed I.A.No.678 of 2011 for raising attachment claiming to be owner of the properties attached on the ground that the respondents 1 and 2 have colluded together and obtained an order of attachment. Pending said application, V.K.Seenivasan died. One Ganesan filed I.A.No.552 of 2012 to condone the delay of 48 days in filing a petition to implead legal heirs of V.K. Seenivasan; I.A.No.553 of 2012 for impleading the Legal heirs of V.K.Seenivasan, I.A.No.554 of 2012 to restore I.A.No.678 of 2011 for setting aside the abatement. According to said Ganesan, he is son of V.K. Seenivasan and he has become owner of the property attached. The first respondent filed counter and disputed the claim of said Ganesan that he is not the son of V.K.Seenivasan and also disputed the claim of V.K. Seenivasan that he is owner of the suit property.

15. The learned Judge considered the various proceedings between the parties in an elaborate manner and also considering the fact that the suit itself was decreed ex parte on 03.06.2011 dismissed all the applications.

16. In the present Civil Revision Petitions, it is not necessary to consider various claim and counter claim by the parties for the simple reason that I.A.No.678 of 2011 for raising attachment before Judgment and suit itself was decreed on 03.06.2011. As rightly pointed out by the learned Judge that the petitioners have to make their claim in Execution Petition only as the suit has already been decreed and application to raise attachment before Judgment has become infructuous.

17. In view of the fact that I.A.No.678 of 2011 itself has become infructuous and all the other three applications have also become infructuous. It is also pertinent to note that neither V.K. Seenivasan nor Ganesan have taken any steps to set aside the decree dated 03.06.2011 in O.S.No.71 of 2011, as they claimed that the suit itself is collusive suit and obtained an order of attachment before Judgment by colluding together.

18. The learned Judge has considered all the materials on record in proper perspective and has given cogent and valid reasons for dismissing the Interlocutory Application in I.A.Nos.552 to 554 of 2012. Further, the learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court. The Judgment relied on by the counsel for the petitioners is not supported by the facts of the present case.



19. In the result, all the Civil Revision Petitions are dismissed. No costs.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar

To

The Subordinate Judge, Srivilliputtur.

+1cc to M/s. Mr.S.NATARAJAN Advocate in SR. No.3648

TRP

JS/SKN/RSK/28.036.2017/5P-3C

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