



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2017
(Reserved on 05.04.2017)

WEB COPY

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP (NPD) (MD) No.698 of 2017
and
CMP (MD) No.3137 of 2017

1) C.Meenakshi
2) S.Selvi
3) C.Marimuthu

... Petitioners/Petitioners

vs.

1) Moondru Manthai 84 Oor Solia Velalar
Samuga Nala Sangam,
Rep. by its President,
Mr.Balakrishnan
Ayyarmalai, Kulithalai Taluk,
Karur District.
P.Rasathiammal (Died)
P.Chinnasamy (Died)
P.Subramanian (Died)

...1st Respondent/1st Respondent

2) P.Muthusamy
P.Nagarajan (Died)

...2nd Respondent/5th Respondent

Petition filed under Section 115 of the Civil Procedure Code, against the fair and decreetal order made in E.A.No.36 of 2017 in E.P.No.98 of 2006 in O.S.No.80 of 2005 by the Sub Court, Palani, dated 17.03.2017.

For Petitioners : Mr.D.Venkatesh
For R1/Caveator : Mr.M.P.Senthil

ORDER

The suit filed for declaration of title, delivery of possession and injunction restraining the tenants from tendering rent for the suit premises to 1st defendant/Palaniyandi Pandaram and rendition of accounts. Pending suit, the said Palaniyandi Pandaram died. So, his legal representatives were brought on record and arrayed as defendants 5 to 9.



separate EP for the other reliefs. The revision petitioners are wife, daughter and son of Chinnu @ Chinnu Pillai who is the 2nd respondent in EP and 6th defendant in the suit. According to them, ex parte decree was passed in the suit for declaration and possession against Chinnu @ Chinnu Pillai and others on 28.03.2006 in O.S.No.80/2005.

3. EP was filed against the defendants 5 to 9. Pending EP, Rasathiammal wife of Palaniyandi Pandaram 2nd respondent/5th defendant died on 09.11.2006. Chinnu @ Chinnu Pillai 3rd respondent/6th defendant died on 07.12.2006. Meanwhile, the other respondents 4 to 6 in EP filed a petition to set aside ex parte decree with condone delay application. The petition to condone the delay of 710 days was dismissed on 26.11.2009.

4. Pending EP, the 2nd and 3rd respondents in EP.98/2006 died. However, the decree holder did not take any steps to bring the legal representatives of the deceased judgment debtors. Without impleading the legal heirs, the ex parte decree is not enforceable. The revision petition in CRP.No.2230/09 filed against the dismissal of condone delay application in filing the application to set aside the ex parte decree, was dismissed for default. Therefore, restoration petition is filed and the same is pending in High Court.

5. Under these circumstances, it is contended that if the execution petition is allowed, grave prejudice will be caused. Stating the above facts, the petition under Section 47 CPC was filed to dismiss E.P.No.98/06 filed in pursuant to ex parte decree passed in O.S.No.80/05.

6. The Execution Court, after notice to the decree holder and on hearing both sides, dismissed the application, on the ground that though it is alleged that the 6th defendant Chinnu @ Chinnu Pillai died on 07.12.2006, the present petition is filed after the lapse of several years. When the legal heirs of Palaniyandi Pandaram were effectively and substantially represented, it is the duty of those judgment debtors to intimate the death of the other judgment debtors to the decree holder which they failed.

7. The learned counsel for the revision petitioners submitted that on the date of ordering delivery of possession, one of the judgment debtors namely, Chinnu @ Chinnu Pillai was not alive. Therefore, ordering a dead person to deliver possession is not an executable order. The decree holder having failed to implead the legal heirs of Chinnu @ Chinnu Pillai, cannot take advantage of his default and plead that there is delay of more than 10 years in executing the decree.



8. Per contra, the learned counsel for the 1st respondent/plaintiff submitted that there is no irregularity or illegality in the order impugned in this revision. The suit was originally filed against Palaniyandi Pandaram. On his death, all his legal heirs were brought on record in the suit itself. The interest of the revision petitioners is substantially represented by one Muthusamy, 8th defendant in the suit.

9. To decide the issue in this revision petition, it is essential to note the dates and events this litigation has travelled.

10. The main defendant is Palaniyandi Pandaram. The other defendants are the sub tenants under Palaniyandi Pandaram. The suit was filed for declaration, possession and mandatory injunction, directing the sub tenants to pay the rent directly to the plaintiff and also permanent injunction restraining the other defendants from paying the rent to the 1st defendant.

11. Pending suit, the 1st defendant Palaniyandi Pandaram died and his legal representatives namely, Rasathiammal, Chinnasamy, Subramanian, Muthusamy and Nagarajan were brought on record as legal representatives as per the order passed by the Trial Court in I.A.No.727/93 dated 23.04.1993 and thereafter, the suit was decreed on 28.03.2006. E.P.No.98/06 was filed by the plaintiff/deGREE holder on 10.06.2006.

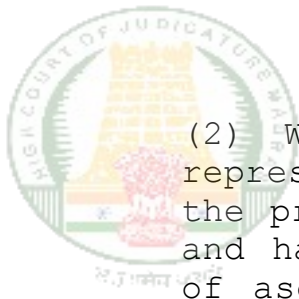
12. In the execution proceedings, the decree holder has initiated the eviction proceedings as against the defendants 5 to 9, who are the legal heirs of the deceased 1st defendant. Pending execution proceedings, Rasathiammal who is the 5th defendant in the suit/2nd respondent in EP, died on 09.11.2006. The 3rd respondent in the execution proceedings namely, Chinnu @ Chinnu Pillai who was 6th defendant in the suit also died on 07.12.2006.

13. The main contention of the revision petitioners is that when two of the judgment debtors have died before execution of the decree, without impleading the legal heirs of the deceased judgment debtors, the decree cannot be executed.

14. Under Section 50 CPC, when a judgment debtor dies before the decree being fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

15. It is relevant to extract below Section 50 CPC:-

'50. Legal representative- (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.



(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.''

16. The reading of this Section appears to be applicable only when there is a sole judgment debtor. If there are more than one judgment debtors, the application under Section 50 CPC, cannot be strictly applied, if the interest of the deceased debtors is adequately represented and taken care by the other judgment debtor or debtors.

17. It is the admitted fact that after the decree passed in O.S.No.80/05, the existing judgment debtors have filed application to set aside the ex parte decree with the delay and the same has been dismissed. Against the dismissal order, they have preferred revision petition, but it has been dismissed for default and not yet restored. It is also submitted by the counsel for the 1st respondent that the appeal preferred against the decree passed by the Trial Court was also not entertained.

18. Under such circumstances, when the judgment debtors on their own have been agitating the execution proceedings at different level, death of one of the judgment debtors will have very insignificant bearing, if the remaining judgment debtors are effectively defending the case. In the present case on hand, the execution has taken against several legal representatives of the deceased Palaniyandi Pandaram. The revision petitioners herein were effectively represented by their father Chinnu @ Chinnu Pillai. The suit was decreed on 28.03.2006. Whereas, Chinnu @ Chinnu Pillai died on 07.12.2006 only after filing of E.P.No.98/06. The other siblings of Chinnu @ Chinnu Pillai were agitating the case by way of filing condone delay petition and CPR in the Trial Court and High Court respectively. When EP.No.98/06 was pending, they have not informed to the decree holder about the demise of Chinnu @ Chinnu Pillai, 2nd respondent in the execution petition.

19. When any one of the contesting party died pending proceedings, under Order 22 Rule 10A, a duty is cast upon the pleader of the deceased party to communicate to the Court about the death of the party. In this case, it is Palaniyandi Pandaram, who is the main contesting party arrayed as first defendant in the suit. The relief has been sought against him by the plaintiff. Since Palaniyandi Pandaram died, the plaintiffs have rightly impleaded his legal representatives as defendants 5 to 9 and had



obtained a decree against them. While executing the decree, one of the legal representatives of the original plaintiff had died. The other legal representatives have been contesting the execution proceedings in their own way and the execution proceedings is pending.

WEB COPY

20. Under these circumstances, after a lapse of 10 years from the death of the said legal representative of Palaniyandi Pandaram, the application to implead the legal representative of the deceased legal representative came to be filed. Taking note of the fact that the interest of the actual defendant is adequately represented by his legal representatives, the Trial Court has declined to entertain the petition to dismiss the execution petition.

21. This Court finds no merit in this revision petition, since the interest of the judgment debtors is adequately represented by the existing respondents. The revision petitioners, if at all, had any interest over the suit property, they could have very well sought themselves impleaded in the EP at the earliest. Having failed to do so, they have waited for more than 10 years and taken out this application for dismissing the execution petition in toto. Even assuming that they have some miniscule right in the suit property, for non impleading them, the entire execution proceedings cannot be dismissed. The relief sought by the revision petitioners in E.A.No.36/17 itself is misdirected and misconceived. Hence, the dismissal of the said EA is perfectly correct. There is no illegality or irregularity in the order passed by the Trial Court.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To
The Subordinate Judge,
Palani.

+1CC to M/S.M.P.Senthil, Advocate, SR.No. 51281

+1CC to M/S.D.Venkatesh, Advocate, SR.No.51671

Order made in
CRP (NPD) (MD) No.698 of 2017
10.04.2017