



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:28.06.2017

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.R.P. (MD) (NPD) No.379 of 2016

and

C.M.P. (MD) Nos.1668 of 2016 and 5591 of 2017

1.Therasa
2.Johnson
3.Rani

...Petitioners/Respondents/Defendants

A.R.Santhanasamy (Died)
A.R.Lawrence (Died)
1.A.Sudhamary
2.Shoba Lidiya
3.Ramola Krichansiya
4.Arul Pradeepan

...Respondents 1 to 4/Decree Holders/
Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to call for the records in E.P.No.38 of 2012 in O.S.No.75 of 1996 on the file of the District Munsif, Thiruvaiyar and strike of the same as it is abuse of process of law and the fraud upon the Court.

For Petitioners : Mr.N.Sivakumar
For Respondents : Mr.M.V.Venkateshan for R1 to R4

ORDER

This revision petition is directed against the institution of Execution Petition filed by the Decree Holder in O.S.No.75 of 1996. The revision petitioners / defendants have invoked the jurisdiction of this Court under Article 227 of the Constitution of India, as soon as the receipt of notice in E.P.No.38 of 2012, on the ground that the ex parte decree passed against the revision petitioners is an abuse of process of law and fraud upon the Court, since suppressing the death of the first plaintiff A.R.Santhana Samy who died as early as on 21.07.2001, the second plaintiff has obtained ex parte decree on 02.01.2002, in the name of dead person.

2. According to the revision petitioners, as per Order 22 Rule 3 of C.P.C., the suit against the deceased 1st plaintiff is abated and therefore, the decree obtained in favour of the deceased first plaintiff is void and unenforceable under law. Since the plaint



averments against the suit property belongs to both the plaintiffs, the Execution Petition filed to deliver the property in favour of the legal heirs of the second plaintiff is only an attempt to commit fraud not only upon the legal heirs of the first plaintiff, but also upon the Court.

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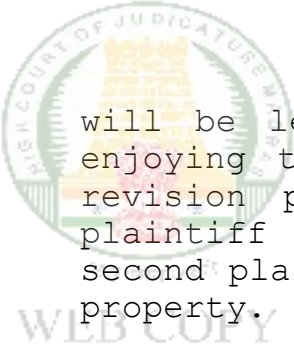
3. According to the revision petitioners, the decree in favour of the dead person is inexecutable under law, void and unenforceable, and therefore, The Execution Petition has to be struck off.

4. This Court at that time of admission of civil revision petition has granted interim stay of execution of the decree. The 4th respondent has filed vacate stay petition along with counter. In the counter, it is submitted that the suit in O.S.No.75 of 1996 was instituted by brothers, one Mr.Sandanaswamy and one Mr.A.R.Lawrence for recovery of possession and the same was decreed *ex parte*. Pending suit, one of the brothers namely, Mr.Sandanaswamy died and the same was recorded by the Court below. Thereafter, the respondents herein tried to set aside the *ex parte* decree by filing an application with delay which was dismissed by the Trial Court. Again, to review the order passed by the Trial Court, I.A.No.92 of 2003 was filed by the revision petitioners herein and that was also dismissed, against which C.R.P.(MD)No.1775 of 2003 filed was also dismissed for non-prosecution. Under these circumstances, it is contended that when the execution petition filed for delivery of possession is in consonance with the decree, the present revision petition has been filed with unsustainable grounds which is liable to be dismissed.

5. Heard the learned counsel for the parties and perused the records.

6. On the face of the record, this Court finds that the respondents herein, have not suppressed the factum of death of one of the plaintiffs as alleged by the revision petitioners. The decree and judgment passed by the Trial Court clearly indicates the death of 1st plaintiff A.R.Santhanasamy. On the death of one of the co-owners in a suit for recovery of possession, the suit does not get abated. Reading of Order 22 Rule 3 C.P.C., makes it clear that the right to sue survives even when one of the plaintiffs dies. It is the contention of the revision petitioners that since the plaintiffs are the joint owners of the property, in a suit for recovery of possession, when one of the plaintiffs dies, the decree passed becomes non executable decree.

7. This Court is unable to accept the said submission. Just because plural expression is employed in the decree that will not *per se* make decree unenforceable, more so, in the facts of the present case where the surviving plaintiff has contested the suit and obtained the decree. If the submission of the learned counsel for the revision petitioners is accepted then surviving plaintiff



will be left with no other relief and he will be deprived from enjoying the fruits of the decree. It is the contention of the revision petitioners that legal representatives of the deceased plaintiff will be deprived of their right, if the heirs of the second plaintiff in E.P.No.38 of 2012 are delivered with whole suit property.

7. The learned counsel for the respondents submitted that an application has been taken out to implead the legal representatives of the deceased first plaintiff. Be that as it may, it is for the Execution Court to deal with such application in accordance with law before disposing of execution petition. Hence this Court finds no reason to entertain this revision petition. The interim order already granted is vacated.

8. Hence, this Civil Revision petition is dismissed. No costs. Consequently, the miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To
The District Munsif,
Thiruvaiyar.

+1cc to Mr.N.SIVA KUMAR Advocate in SR. NO.62464
MRN.MM
JS/GT/SAR.3/23.08.2017/ 3P-3C

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