



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP(NPD) (MD) No.6 of 2016

and

CMP(MD) No.612 of 2017

1) K.T.V. Handloom Centre,  
Represented by its Partner,  
K.V.Ramamoorthy,  
S/o.Vasudeva Iyer,  
58, ARR Road,  
Kumbakonam,  
Thanjavur District.

2) K.V.Ramamoorthy

K.K.Ramacharry (Died)

3) K.R.Rajamani

... Petitioners

vs.

Seenivasa Investments,  
Rep. by its Managing Partner,  
K.G.Ramasamy,  
No.40, J.P Kovil West Street,  
Kumbakonam,  
Thanjavur District.

... Respondent

Petition filed under Section 115 CPC against the order dated 22.12.2015 made in E.P.No.65 of 2006 in O.S.No.232 of 2004 on the file of the 2<sup>nd</sup> Additional District Court, Thanjavur.

For Petitioner : Mr.R.Vijayakumar  
For Respondent : Mr.M.V.Santharaman

ORDER

This revision petition is directed against the order dated 22.12.2015 passed by the Execution Court, proclaiming sale of immovable property mentioned in the petition schedule pursuant to the money decree passed on 20.04.2006 in O.S.No.232/04.



partners for recovery of money towards goods sold and delivered. The proclamation of sale was ordered on 22.12.2015, fixing the sale date as 11.01.2016. Before the proclamation order passed, the 3<sup>rd</sup> defendant/KK.Ramachari died and the same was intimated to the Court by way of a Memo. The Execution Court without impleading the legal representatives of the deceased 3<sup>rd</sup> defendant/judgment debtor, had ordered proclamation of sale and fixed date for sale, which is bad in the eye of law. Since the proclamation of sale is against the interest of a dead person, the order is liable to be set aside.

3.The learned counsel for the revision petitioners submitted that for the debt of the firm, the Trial Court held, both the firm and its partners are jointly and severally liable. The decree holder has proceeded against the personal property of the partners, while so, without impleading the legal heirs of the deceased partner, proclamation of sale is illegal and contrary to law.

4.Per contra, the learned counsel for the respondent/decreed holder submits that in the Memo filed by the revision petitioners dated 04.12.2015, informing the death of the 3<sup>rd</sup> defendant/KK.Ramachari on 09.11.2015, the Execution Court has passed order on 14.12.2015, stating that the Memo is only to record the death of the 3<sup>rd</sup> defendant and not to postpone the auction sale. Further, in the claim petition filed in E.A.No.6/2009, only a meagre share in the property is claimed by the 3<sup>rd</sup> defendant. Hence, no prejudice will be caused to the legal representatives of the 3<sup>rd</sup> defendant.

5.The sale fixed on 14.12.2015 could not fructify since there was no bidders. A memo was filed on behalf of the decree holder, stating that the legal representatives of the deceased 3<sup>rd</sup> defendant need not be impleaded, in view of the judgment reported in **AIR 1997 SC 257, Anokhe Lal vs. Radhamohan Bansal and others**. The Execution Court accepting the same, fixed the auction by 11.01.2016.

6.Suppressing the orders passed by the Execution Court on 14.12.2015 and 17.12.2015, the revision petitioners have approached this Court with unclean hands and obtained ex parte stay of auction, causing grave prejudice to the decree holder. The execution of the decree of the year 2006 is prevented by the judgment debtors under the wrong pretext or by making false claim.

7.In the earlier occasion, this Court dismissed the other judgment debtors' revision petition with cost Rs.25,000/-. The true intention of the judgment debtors is to protract the proceedings. Therefore, through one or other persons, they make frivolous claim and have successfully depriving the decree holder



from reaping the fruits of the decree.

8. The law governing suits against partnership firm and execution of decree against a partnership firm is broadly covered by the following provisions of law:-

'(i) Order XXX- Suits by or against firms and persons carrying on business in names other than their own:-

1 . Suing of partners in name of firm- (1) Any two or more persons claiming or being liable as partners and carrying on business, in India may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

(2) Where persons sue or are sued partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice such pleading or other document is signed, verified or certified by any one of such persons.

2 . Disclosure of partners' names- (1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demanding writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1) all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct.

(3) Where the names of the partners are declared in the manner referred to in sub-rule (1) the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint:

[Provided that all proceedings shall nevertheless continue in the name of the firm, but the name of the partners disclosed in the manner specified in sub-rule (1) shall be entered in the decree.]

3 . Service- Where persons are sued as partners in the name of their firm, the summons shall be served either-

(a) upon any one or more of the partners, or

(b) at the principal place at which the partnership

business is carried on within India upon any person having, at the time of service, the control or management or the



partnership business, there, as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without India:

Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within India whom it is sought to make liable.

4 . Rights of suit on death of partner— (1) Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872 (9 of 1872) where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

(2) Nothing in sub-rule (1) shall limit or otherwise effect any right which the legal representative of the deceased may have—

(a) to apply to be made a party to the suit, or

(b) to enforce any claim against the survivor or survivors.

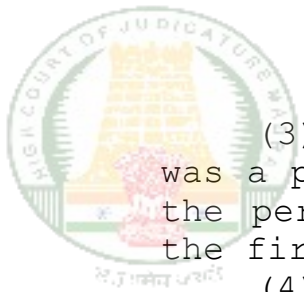
5 . Notice in what capacity served— Where a summons is issued to a firm and is served in the manner provided by rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner.

6 . Appearance of partners— Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

7 . No appearance except by partners— Where a summons is served in the manner provided by rule 3 upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a partner of the firm sued.

8 . Appearance under protest— (1) Any person served with summons as a partner under rule 3 may enter an appearance under protest, denying that he was a partner at an material time.

(2) On such appearance being made, either the plaintiff or the person entering the appearance may, at any time before the date fixed for hearing and final disposal of the suit, apply to the Court for determining whether that person was a partner of the firm and liable as such.



(3) If, on such application, the Court holds that he was a partner at the material time, that shall not preclude the person from filing a defence denying the liability of the firm in respect of the claim against the defendant.

(4) If the Court, however, holds that such person was not a partner of the firm and was not liable as such that shall not preclude the plaintiff from otherwise serving a summons on the firm and proceeding with the suit; but in that event, the plaintiff shall be precluded from alleging the liability of that person as a partner of the firm in execution of any decree that may be passed against the firm.]

9 . Suits between co-partners- This Order shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners, in common; but not execution shall be issued in such suits except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

10 . Suit against person carrying on business in name other than his own- Any person carrying on business in a name or style other than his own name, or a Hindu undivided family carrying on business under any name, may be sued in such name or style as if it were a firm name, and, in so far as the nature of such case permits, all rules under this Order shall apply accordingly. ''

ii) Order 21 Rule 50 CPC:-

''50. Execution of decree against firm- (1) Where a decree has been passed against a firm, execution may be granted-

- (a) against any property of the partnership;
- (b) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;
- (c) against any person who has been individually served as a partner with a summons and has failed to appear:

Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of [section 30 of the Indian Partnership Act, 1932 (9 of 1932)].

(2) Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm he may apply to the Court which passed the decree for leave, and where the liability is not disputed, such court may grant such leave, or, where such liability is disputed, may order that the



liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

(3) Where the liability of any person has been tried and determined under sub-rule (2) the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(4) Save as against any property of the partnership, a decree against a firm shall not lease, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer.

(5) Nothing in this rule shall apply to a decree passed against a Hindu Undivided Family by virtue of the provision of rule 10 of Order XXX.''

9. In case of death of one of the partners, pending execution proceedings, if the attachment is against the property of the partners, then, the legal heirs of the deceased partners ought to be brought on record, if the proclamation is not issued. If proclamation is issued and the partner who is already on record died, before sale, then, under Order 21 Rule 22A C.P.C., the Court can proceed with sale, notwithstanding the decree holder's failure to bring on record the legal representatives, provided, no prejudice is caused to the legal representatives of the deceased judgment debtor. For better clarity, Order 21 Rule 22A CPC is extracted below:-

''22A. Sale not to be set aside on the death of the judgment-debtor before the sale but after the service of the proclamation of sale.- Where any property is sold in execution of a decree, the sale shall not be set aside merely by reason of the death of the judgment-debtor between the date of issue of the proclamation of sale and the date of the sale notwithstanding the failure of the decree-holder to substitute the legal representative of such deceased judgment-debtor, but, in case of such failure, the Court may set aside the sale if it is satisfied that the legal representative of the deceased judgment-debtor has been prejudiced by the sale.''

10. As per Order 21 Rule 69(2) CPC, in case, if sale could not be effected within 30 days from the date of proclamation and adjourned or stopped, a fresh proclamation shall be made, unless the judgment debtor consents to waive it.

11. The instant case record reveals that O.S.No.232/04 was filed against the partnership firm as first defendant and all its partners as defendants 2 to 4. The suit was decreed on 20.04.2006, as against the firm and the partners jointly and severally. The execution petition was filed on 02.11.2006 to attach and sell the immovable property of the partners.



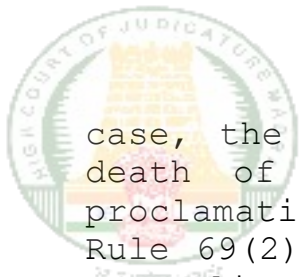
12.The judgment debtors earlier contested the EP on the ground that there are other sharers to the property and therefore, the judgment debtors alone are not necessary parties and that the rate of interest claimed is wrong. The said objections were held to be unsustainable and the Execution Court has proceeded with issuance of sale publication. The earliest proclamation was issued on 16.07.2008 fixing the date of sale as 25.08.2008. Due to subsequent filing of E.A.No.9/2008, EA.Nos.6 and 10/2009 and the civil revision petitions filed in the High Court against the orders passed in E.As., the Execution Court has not proceeded further.

13.This Court in CRP(NPD)(MD)No.583 and 713 of 2008 passed order on 20.12.2012, directed the Execution Court to dispose the matter within a period of two months. The Execution Court after disposing the E.As., issued a fresh proclamation on 04.12.2013, fixing the date of auction as 20.01.2014. Again, the judgment debtors have approached the High Court and stayed the further proceedings. The stay was later vacated and CRPS.2303/13, 2304/13 and 51/14 were all disposed on 29.07.2015.

14.In the above circumstances, fresh proclamation has been ordered on 30.10.2015, fixing the sale date as 14.12.2015. On the date of sale, the 2<sup>nd</sup> petitioner herein/judgment debtor has filed a Memo reporting the death of the 3<sup>rd</sup> defendant/judgment debtor on 09.11.2015. The Execution Court has adjourned the case and postponed the sale for want of bidders and also recorded the Memo. On 17.12.2015, when the case was taken up for hearing, taking note of the Memo filed by the decree holder, the Execution Court proceeded further, fixing the date of sale by 11.01.2016.

15.The revision petitioners without disclosing the complete facts, have filed the present revision petition, as if, the Execution Court has ignored the Memo filed, intimating the death of the 3<sup>rd</sup> defendant/judgment debtor. In fact, the Execution Court has considered the Memo and has recorded its finding. Further, relying upon the judgment of the Hon'ble Supreme Court reported in **AIR 1997 SC 257, Anokhe Lal vs. Radhamohan Bansal and others**, the Execution Court has consciously held that the legal representatives of deceased 3<sup>rd</sup> defendant/judgment debtor are needless to be impleaded and no prejudice will be caused to them, if the EP is proceeded with without impleading them.

16.The said orders which were passed before filing of this revision petition neither challenged nor disclosed by the revision petitioners. The said suppression itself suffice to dismiss this revision petition. Even on facts, as pointed out by the Apex Court in AIR 1997 SC 257(supra), under Order 21 Rule 22A CPC, if the proclamation is issued and one of the partners dies, impleading of his legal representatives is not mandatory. In this



case, the attachment and proclamation was issued long before the death of the 3<sup>rd</sup> defendant/judgment debtor. Even, the last proclamation which was issued afresh in consonance with Order 21 Rule 69(2) CPC was ordered while the 3<sup>rd</sup> defendant/judgment debtor was alive. Therefore, the action of the Execution Court in proceeding further recording that no prejudice will be caused to the legal representatives of the deceased judgment debtor is perfectly right.

17.It is also pertinent to note that the present revision petition is filed not by the legal representatives of the deceased 3<sup>rd</sup> defendant, but by the existing judgment debtors. Non-impleading of the legal representatives of 3<sup>rd</sup> defendant is not necessary if no prejudice is caused as per Order 21 Rule 22A CPC. The revision petitioners or the legal representatives of the 3<sup>rd</sup> defendant have no reasonable cause to further delay the execution of the decree.

18.The conduct of the revision petitioners filing spate of petitions, suppressing the facts and through proxy is sheer abuse of process of law and highly deprecated. Since the revision petitioners have abused the process of Court by mis-representation and suppression of fact, this Civil Revision Petition is dismissed with cost of Rs.5000/-payable to the decree holder. The interim stay already granted is vacated and consequently, connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To  
The 2<sup>nd</sup> Additional District Court,  
Thanjavur.

Copy to  
The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.R.Vijayakumar, Advocate Sr.No.19264  
+1cc to Mr.T.R.Subramanian, Advocate Sr.No.18696

nbi

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