

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2018

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

CRP.NPD.No.902 of 2006 and
CMP.Nos.7308/2006 and 3057/2007

Amirthalingam ...Decree Holder/Plaintiff/ Petitioner

Vs

1. Sivasami (Deceased)
2. Ratnasamy
3. Muthammal
4. Natarajan
5. Thailammal
6. Marimuthu Ammal (deceased)
7. S.Shanmugam
8. S.Sakthivel
9. S.Shankaran

.. Respondents

(R6 to 9 brought on record as LRs. of the
respondent No. 1 vide order dated 14/12/2017)

Prayer:Civil Revision Petition filed under Section 115 of
C.P.C. against the judgment and decree dated 1.2.2006 made in
E.P.No.90/2005 in O.S.No.35/1985 on the file of the District
Munsif, Nagapattinam.

For petitioner : Mr.T.R.Rajaraman

For Respondents : Ms.R.T.Shyamala
2, 4 and 7

R1 & R6 :Died

For Respondent 3 :No appearance

R5, R8, R9 : Not ready in notice

O R D E R

The above Civil Revision Petition is filed challenging the
order passed by the learned District Munsif, Nagapattinam, in
E.P.No.90/2005 in O.S.No.35/1985 dated 01.02.2006 on the
mistaken ground that the final decree had been passed against a
dead person, namely, the first defendant.

2. It is seen from the records that the preliminary decree in O.S.No.35/1985 was passed on 25.06.1998 and the final decree on 30.12.2002. Nearly 1 ½ years after passing of the final decree, the 1st defendant, namely, Dakshinamoorthy Gounder died on 18.04.2004. Therefore, on the date of the passing of the final decree, he was very much alive. The Executing Court has proceeded with an erroneous view that the final decree had been passed subsequent to the death of the 1st defendant and therefore, the decree against the dead person is null and void.

3. In view of the above facts, the Civil Revision Petition stands allowed and the order passed by the learned District Munsif, Nagapattinam in E.P.No.90/2005 in O.S.No.35/1985 is set aside. The matter is remanded back to the District Munsif, Nagapattinam for fresh consideration of the Execution Proceedings. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

tsi
To

The District Munsif,
Nagapattinam.

+1c to Mr.T.R.Rajaraman, Advocate Sr.68638
+1cc to M/S.R.J.Shymala, Advocate Sr.68018

CRP.NPD.No.902 of 2006

ssv[co]
srg 09/01/2019

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