

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.2142 to 2144 of 2014
and M.P.Nos.1 and 2 of 2014

1.Indiravathy
2.C.S.Venkatesh Babu
3.Lalitha Devi
4.Rama Devi

.. Petitioners in all C.R.Ps.

Vs.

1.C.H.Babu

Sulochana Ammal (deceased)

2.C.H.Sathyanarayana (not traceable)
3.C.H.Kanniah
4.C.H.Hari
5.C.H.Manohar

.. Respondents in all C.R.Ps.

(2nd respondent given up. Defendants 3 to 5
are recorded as the legal heirs of the
deceased Sulochana Ammal 1st defendant)

COMMON PRAYER: Civil Revision Petitions are filed under Section
115 of Civil Procedure Code, against the order dated 24.02.2014
made in I.A.S.R.Nos.52125 to 52127/2013 in O.S.No.5616 of 2000
on the file of the XIX Additional City Civil Court, Chennai.

In all C.R.Ps.

For Petitioners : M/S.K.Jenitha
For R2 : given up
For R4 : Mr.J.Sagayaraj
For R1,R3,R5 : No appearance

COMMON ORDER

The Civil Revision Petitions are filed against the order dated 24.02.2014 made in I.A.S.R.Nos.52125 to 52127/2013 in O.S.No.5616 of 2000 on the file of the XIX Additional City Civil Court, Chennai.

2. In all the three Civil Revision Petitions, the issues are interlinked and hence, they are disposed of by this common order.

3. The petitioners in all the three Civil Revision Petitions are third parties, first respondent is the plaintiff and one Sulochana Ammal (deceased) and respondents 2 to 5 are the defendants 1 to 5 in O.S.No.5616 of 2000 on the file of the XIX Additional City Civil Court, Chennai. The first respondent filed the said suit for partition and separate possession. The first petitioner is wife, second petitioner is son and petitioners 3 and 4 are the daughters of second respondent/C.H.Sathyanarayana. In the said suit, a preliminary

decree was passed declaring 1/6th share to the first respondent/plaintiff and other defendants. Before the final decree could be passed, first defendant viz., Sulochana Ammal, who is mother of the respondents 1, 3 to 5 died and they inherited 1/6th share of the first defendant equally. The final decree application filed by the first respondent was dismissed for default on 12.12.2008. The fourth respondent herein C.H.Hari filed I.A.No.188 of 2011 for passing of final decree. When the said application is pending, the petitioners herein filed three applications I.A.SR.No.52125 of 2013 under Section 153 CPC, to amend the preliminary decree adding the petitioners as defendants 6 to 9 in the suit and I.A.SR.No.52126 of 2013 under Section 108 of the Evidence Act, 1872, to declare that the first petitioner's husband C.H.Sathyanarayana, the second defendant in the suit, is deemed to be dead in law and I.A.SR.No.52127 of 2013 under Order XXII Rule (2) C.P.C. to bring on record the petitioners as legal representatives of C.H.Sathyanarayana, the second defendant in the suit and in I.A.No.188 of 2011.

4. According to the petitioners, second respondent C.H.Sathyanarayana was missing from 29.03.1999 from their house

at Choolaimedu and his whereabouts were not known. In spite of their best effort, they could not trace him. The second petitioner gave a complaint to the B5 police station, Choolaimedu, Chennai-94 on 09.04.1999. The said complaint has been registered in Crime No.219 of 1999. Till now, the police has not traced the said C.H.Sathyanarayana. The petitioners have enquired about him to all his friends and relatives and no body have seen him from 29.03.1999. The said C.H.Sathyanarayana is presumed to be dead. In view of the above facts, the petitioners have filed above three applications for the reliefs stated above.

5. The learned Judge without numbering the said applications rejected the same on the ground that the petitioners have not produced any document to show that C.H.Sathyanarayana is presumed to be dead and earlier petitions filed on 06.06.2013 with the similar relief was rejected by the Court on 12.07.2013 and without any appeal or revision, the present applications are filed.

6. Against the said order dated 24.02.2014 made in I.A.S.R.Nos.52125 to 52127/2013 in O.S.No.5616 of 2000, the petitioners have filed the present three Civil Revision Petitions.

7. The fourth respondent in the Civil Revision Petitions viz., C.H.Hari/fourth defendant in the suit filed vacate stay petition in M.P.No.2 of 2014, for vacating the interim stay granted in M.P.No.1 of 2014 and contended that similar petitions filed by the petitioners earlier were rejected and therefore, the present applications are not maintainable. The petitioners have suppressed the fact that one Srinivasa Finance filed C.S.No.884 of 1999 against C.H.Sathyanarayana and obtained interim order of attachment of 1/6th share of suit property. Further, I.P.Nos.121 and 122 of 1999 filed by the petitioners 1 and 2 for declaring them as insolvents and in the list of assets filed with the official assignee, attached to the High Court Madras, the petitioners have shown the 1/6th share of C.H.Sathyanarayana in the suit property. Behind the back of the official assignee, allotment of 1/6th share sought for by the petitioners is not maintainable.

8. Heard the learned counsel for the petitioners as well as fourth respondent and perused the materials available on record.

9. All the three Civil Revision Petitions are filed by the legal heirs of C.H.Sathyanarayana/second respondent herein on the

ground that C.H.Sathyanarayana, husband of first petitioner and father of petitioners 2 to 4 is presumed to be dead. According to the petitioners, the said C.H.Sathyanarayana went missing from 29.03.1999 and from that onwards, his whereabouts were not known. A complaint was lodged by the second petitioner on 09.04.1999 in B5 police station and till date, they could not trace him. The petitioners have also contended that the relatives and friends of C.H.Sathyanarayana have not seen him from 29.03.1999. The fourth respondent C.H.Hari, who has filed vacate stay petition, to vacate the interim order, has not denied the contention of the petitioners that C.H.Sathyanarayana was missing from 29.03.1999. The fourth respondent C.H.Hari is none other than the brother of C.H.Sathyanarayana. In the affidavit filed by him in I.A.No.188 of 2011 for passing of final decree, he himself has stated that the whereabouts of C.H.Sathyanarayana were not known. He has also stated in the affidavit that the petitioners are wife, son and daughters respectively, of the said C.H.Sathyanarayana. If a man has not been heard for seven years by those persons who would naturally have heard of him, then the said man is presumed to be dead.

10. In the present case, the parties to the suit are relatives to C.H.Sathyanarayana and they do not claim to have seen him within seven years, when the petitioners filed the applications seeking the said C.H.Sathyanarayana presumed to be dead.

11. In view of Section 108 of the Indian Evidence Act coupled with the complaint dated 09.04.1999, which was lodged by the second petitioner in B5 police station and concerned police have not traced C.H.Sathyanarayana till date, it has to be presumed that the said C.H.Sathyanarayana is deemed to be dead.

12. For the above reason, impugned order of the learned Judge is liable to be set aside and it is hereby set aside. The Civil Revision Petitions are allowed and the matter is remitted back to the trial Court. The learned Judge is directed to number the applications, if they are otherwise in order. The petitioners are directed to let in evidence to prove that C.H.Sathyanarayana was missing from 29.03.1999 and they are the legal heirs of the said C.H.Sathyanarayana. No costs. Consequently, connected Miscellaneous petitions are closed.

30.01.2018

Index:Yes/No
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V.M.VELUMANI,J.

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To

XIX Additional Judge
City Civil Court
Chennai.



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