

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2018

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

CRP(PD).Nos.497 and 498 of 2015

and

M.P.No.1 of 2015

1.Duraisamy
2.Saravanan
3.Thiyagu

...Petitioners
(in both C.R.P(PD)s)

Vs.

1.Rathinam
2.Kulandaivel
3.Sathyaraj
4.Kannan
5.Keerthika

...Respondents
(in both C.R.P(PD)s)

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal order in I.A.Nos.856 and 857 of 2014 in O.S.No.145 of 2009, dated 12.11.2014 pending on the file of the Principal District Munsif, Tiruchengode.

For Petitioners : Mr.N.Manokaran
(in both C.R.P(PD)s)

For Respondents : Mr.S.Mukunth
for M/s.Sarvabhauman Associates
(in both C.R.P(PD)s)

COMMON ORDER

The order under challenge in these civil revision petitions is that the rejection of the petitioners/ plaintiffs application made under Order 32 Rules 9 or 12 of C.P.C, to declare the 5th defendant, as a major.

2. According to the learned counsel for the petitioners, when the minor defendant attains majority, the recourse available for the minor plaintiff would be equally applicable to the minor defendant and therefore an application under Order 32 Rule 12 or 13 C.P.C is maintainable.

3. The learned counsel for the petitioners submitted that the Court below was not justifiable in rejecting the application.

4. The learned counsel for the respondents on the other hand submitted that the law is well settled to the effect that there are no provisions in the Civil Procedure Code, to declare a minor defendant as a major and as such the trial Court is justified in rejecting the application.

5. This Court in the case of ***Lanka Sanyasi Vs. Lanka Lakshman Naidu and Others*** reported in ***AIR 1928 Mad 294 (DB)*** has held that the Civil

Procedure Code does not contemplate or enable a minor defendant to be declared as a major at the instance of the plaintiff. The said judgement is consistently relied upon by various judgements of this Court. The relevant portion of the judgement reads as follows :

“1. This Second appeal has arisen from a suit which was instituted by two plaintiffs for a declaration that a decree passed against them in Original Suit No.461 of 1918 on the file of the District Munsif's Court at Parvathipur was not binding on them and also for possession of the property which under the decree appears to have been obtained by the first defendant in this litigation who was the decree-holder in the previous suit. In the District Munsif's Court the plaintiffs' suit was dismissed, but in the lower Appellate Court the learned Subordinate Judge, having arrived at the finding that the first plaintiff at least was a major on the date of the compromise on which the decree was passed, held that the decree was not binding on both the plaintiffs and, therefore, granted a decree in favour of both the plaintiffs declaring that the previous decree was not binding on them and also for delivery of possession of the property. It has been argued by the learned Vakild for the appellant before us that even on the ground on which the lower Appellate Court held that the previous decree was not binding on the plaintiffs, namely, that the first plaintiff at least was a major, the lower Appellate Court was wrong in considering that a decree passed against persons who are on the record as minors in the belief that they continued up to the time of the decree as minors would not be binding on them. For this purpose the learned Vakild for the appellant referred to the decision of Sadasiva Ayyar and Napier, JJ., in the case of Seshagiri Rao v.Hanumantha Rao 32 Ind.Cas.391

: 39 M. 1031 : 19 M.L.T.93. In that case the learned Judges have clearly pointed out that there are no provisions in the Civil Procedure Code relating to suits by and against minors obliging a plaintiff to apply for discharge of the guarding ad litem of a defendant who had ceased to be a minor. There are provisions in the civil procedure code for a minor plaintiff on attaining majority electing to go on or not to go on with a litigation. That is obviously in view of the fact that the plaintiff is in a position to elect either to go on or not to go on with a litigation to which he is a party because he is dominus litus. No such consideration is available in respect of the defendant. A defendant having been made a party defendant to the action may no doubt confess judgment but has no such right of election as the plaintiff has. That is probably the reason why no provisions have been made in the Civil Procedure Code in respect of a minor defendant attaining majority. Apparently, therefore, we must take it, as found by the learned Judges in that case, that the minor defendant who comes of age may, if he thinks fit, come on the record and conduct the defense himself. If, however, he does not do so and allows the case to proceed as though he was still a minor without bringing to the notice of the Court the fact of his having attained majority, then he must be deemed to have elected to abide by the judgment or adjudication by the Court with respect to the matters in controversy on the basis of the suit at the time. That is how the learned judges came to the conclusion in that case that a judgment given by a competent Court against a defendant albeit a defendant who had during the pendency of the suit attained majority having ceased to be a minor, is not a nullity. That view is based on sound principle. But the difficulty in this case has arisen from a contention that was put forward by Mr.Jagannatha Dass on behalf of the respondent who drew our attention to the judgment of the same learned Judges on an application for review made to them in that very case. The judgment on

review by the learned Judges is reported in Seshagiri Rao v. Tangaturi Jagannadham 37 Ind. Cas. 387 : 20 M.L.T. 479. At first sight it appeared as though on this decision the learned Judges came to the conclusion that because they discovered that the application to set aside the sale of the property sold in execution was within time they regarded the judgment itself as either voidable or avoided. But on a closer examination of the case there seems to be no doubt whatever that what the learned Judges did not review was merely to set aside the sale treating it as a separate proceeding and because in respect of that proceeding there was no proper notice served on that party who had by that time become a major. As we respectfully agree with the decision of the learned Judges in Seshagiri Rao v. Tangaturi Jagannadham 32 Ind. Cas. 391 : 39 M. 1031 : 19 M.L.T. 93 and also with another judgment of this Court in the case of Enuga Sundararama Reddi v. Bazwada Pattabhiramireddi 42 Ind. Cas. 421 : 6 L.W. 262 : (1917) M.W.N. 495 it follows that the mere circumstance that a minor defendant had attained majority during the pendency of the suit and has not elected to continue the defence himself is not sufficient to enable him to have declared as not binding on him the judgment duly pronounced by the Court.

6. The aforesaid observations of this Court are self explanatory to the effect that the provisions in the Civil Procedure Code do not enable the plaintiff to have a minor defendant declared as a major.

7. Hence, I do not find any infirmity in the order passed by the trial Court and as such these Civil Revision Petitions stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

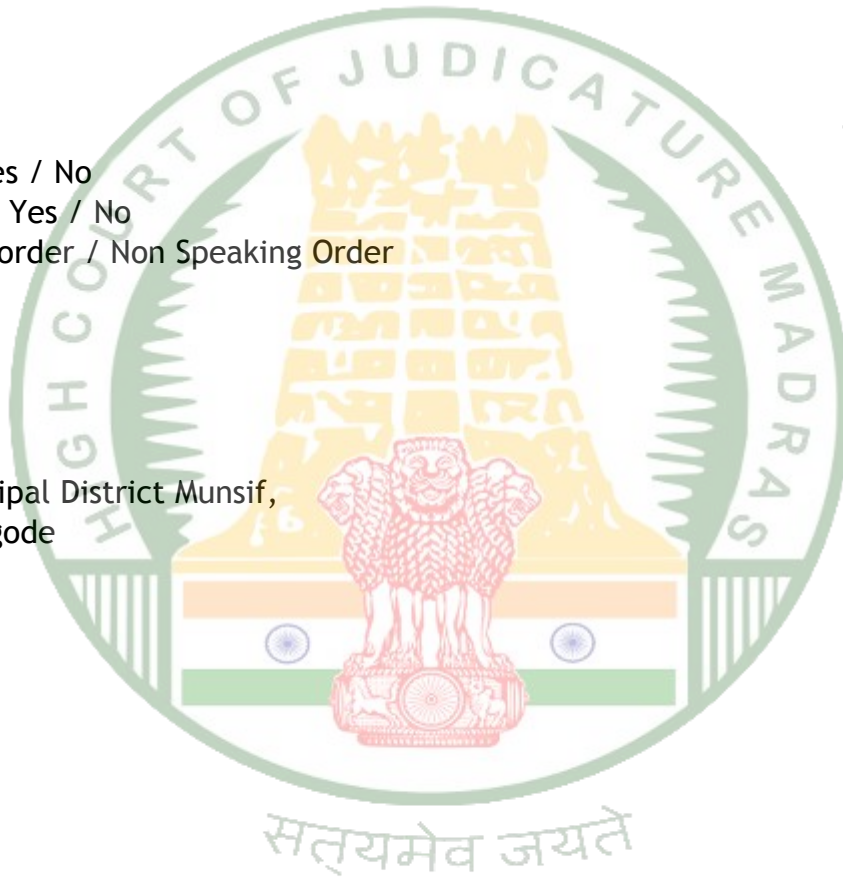
12.12.2018

Index : Yes / No
Internet : Yes / No
Speaking order / Non Speaking Order

ms

To

The Principal District Munsif,
Tiruchengode



WEB COPY

M.S.RAMESH, J.

ms



CRP(PD).Nos.497 and 498 of 2015
and
M.P.No.1 of 2015

WEB COPY

12.12.2018