



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) No.2052 of 2017 (NPD)

and

C.M.P (MD) No.10214 of 2017

G.Subramanian (died)

Anthoniumammal (died)

1.S.Sokkanathan

2.PeriyaKuruvammal

3.Chinna Kuruvammal

4.Sanmugalakshmi Revision

...Petitioners/Judgment debtors /defendants

Vs.

Sundaram (died)

Pandyammal (died)

1.Ramar Ammal

... Respondent/Decree holder/3rd plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to pass an order setting aside the fair and decreetal order dated 07.08.2017 passed in E.P.No.54 of 2010 in O.S.No.35 of 2000 on the file of District Munsif cum Judicial Magistrate Court, Sivagiri.

For Petitioners : Mrs.Thenmozhi Shivaperumal

For Respondent : No Appearance

ORDER

This Civil Revision Petition has been filed challenging the order dated 07.08.2017 made in E.P.No.54 of 2010 in O.S.No.35 of 2000 on the file of District Munsif cum Judicial Magistrate Court, Sivagiri.

2. Heard the learned Counsel for the petitioners and perused the materials available on record. Despite notice was served on the respondent, neither the respondent nor his Counsel was present.

3. The respondent /plaintiff has filed a suit in O.S.No.35 of 2000 on the file of the District Munsif cum Judicial Magistrate Court, Sivagiri, for declaration and for handing over the possession and for other reliefs.



4. The learned Counsel for the petitioners would submit that the suit has been filed against one Subramaniam in the year 2000 and he entered appearance and filed his counter statement on 19.06.2001 and then he died on 07.01.2002. Thereafter, the suit was decreed on 09.09.2004 against the dead person. Instead of impleading the legal heirs of the deceased, the plaintiffs have proceeded with the case, as if the said Subramaniam is alive.

5. The plaintiffs filed the suit for recovery of possession and the suit was decreed and in order to execute the decree, the plaintiffs have filed the Execution Petition in E.P.No.54 of 2010 and the same was ordered on 07.08.2017.

6. It is the case of the petitioners that the suit was decreed against a dead person and without impleading the legal heirs of the deceased, the decree passed in the suit itself is not valid and therefore, the execution petition filed by the respondents / plaintiffs is not at all maintainable.

7. The learned Counsel for the petitioners would contend that the petitioners were aware of the proceedings only after impleading them in the Execution proceedings by the respondents.

8. A perusal of records would clearly show that the decree was passed on 09.09.2004 and the petitioners' father died on 07.01.2002. It is well settled law that after the death of the parties, if no application has been filed to implead the legal heirs as parties, then the suit has to be dismissed as abated.

9. If no impleading application is made by the party concerned to the appeal or by the legal representative of the deceased on whom the right to sue has devolved for substitution of their names in place of the deceased party within 90 days from the date of death of the party, such appeal abates automatically on expiry of 30 days from the date of death of the party.

10. The learned Counsel for the petitioners has relied on the judgment of Honourable Supreme Court of India reported in 2017 (2) Law Herald (P & H) 1565 (SC) : 2017 Law Herald.Org 910 in Gurunam Singh (D) by Lrs. & Others Vs. Gurubachan Kaur (D) By Lrs. & Others, wherein, it is observed in paragraph No.23, as follows:

"The appellants are the legal representatives of defendant Nos.2 and 3 on whom the right to sue has devolved. They had, therefore, right to question the legality of the impugned order inter alia on the ground of it being a nullity. Such objection, in our opinion, could be raised in appeal or even in execution proceedings arising out of such decree. In our view, the objection, therefore, deserves to be upheld. It is accordingly, upheld."



This principle squarely applies to this case and the impugned order has, necessarily, to be set aside.

11. In the result, this Civil Revision Petition is allowed and the order and decreetal order passed in E.P.No.54 of 2010 in O.S.No.35 of 2000 on the file of District Munsif cum Judicial Magistrate Court, Sivagiri is set aside. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CSI)

/True Copy/

Sub-Assistant Registrar

To

The District Munsif cum Judicial Magistrate,
Sivagiri.

+One cc to M/s.Thenmozhi, Advocate, SR.No.43317

rm

RL/3C/3P/MR/SAR2/9/2/2018

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