



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.08.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(NPD) (MD).No.68 of 2016 and
C.M.P.(MD)No.274 of 2016

1. Shanthi
2. V.Geethalakshmi ... Petitioners/Respondents/
Defendants/Judgment Debtors

Vs.

1. K.Ananthi
2. K.Vinu
3. K.Vidhu ... Respondents/Petitioners/
Plaintiffs/Decree Holders

PRAYER : Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to allow the Civil Revision petition and set aside the orders passed by the learned Principal District Judge, Thanjavur, in E.P.No.155 of 2013 in O.S.No.45 of 2010, dated 27.11.2015 and set aside the same.

For Petitioners : Mr.V.Singan
For Respondents : Mr.B.Thanga Aravindh

O R D E R

One Dr.Kannappan filed O.S.No.45 of 2010 on the file of the learned Principal District Judge, Cuddalore, for recovery of a sum of Rs.9,45,000/- with interest.

2. The plaintiff's case is that one Vetrivel executed a Pro-Note in his favour for a sum of Rs.7,00,000/- and that he subsequently, passed away. Therefore, he filed a suit against the legal heirs of the said Vetrivel. The legal heirs are only Shanthi and Geethalakshmi who are the Revision petitioners herein. The Revision petitioners herein received the suit summons. But they had remained ex-parte. Therefore, an ex-parte Judgment and Decree came to be passed in the suit on 08.06.2010. To execute the same, E.P.No.155 of 2013 was also filed. Since the Revision petitioners are placed in Thanjavur, the execution petition was transmitted to the file of the learned Principal District Judge, Thanjavur. An attachment order was passed. Questioning the same, this Civil Revision petition came to be filed.



3. This Court granted an order of Interim Stay on condition that the Revision petitioners deposit 30% of the decretal amount. The learned counsel for the Revision petitioners submits that the said condition has since been complied with.

4. The learned counsel appearing for the Revision petitioners strongly contended that admittedly, the Revision petitioners did not execute the Pro-Note in question. Therefore, they can be liable only to the extent of their inheritance. But then, the learned Principal District Judge granted personal decree against the Revision petitioners. It is on the very face of it, unsustainable in law and inexecutable.

5. This Court is unable to agree with the contention for more than reasons than one. No doubt, a personal decree has been passed by the learned Principal District Judge, Cuddalore. Even though, the Revision petitioners herein had not executed the Pro-Note themselves, but then, on this ground the decree cannot be rendered inexecutable. This Court will have to travel beyond narrow technicalities and render substantial justice. It is not in dispute that the attachment order was passed only against as inherited property. This Court clarifies that the petitioners will be liable only to the extent of inheritance and that they will not have any personal liability. Since this clarification has been given, the Executing Court can proceed in the manner.

6. At this stage, the learned counsel for the Revision petitioners submitted that they have the statutory right to seek the relief of setting aside the ex-parte Judgment and Decree. He further submitted that the Revision petitioners had filed an application under Order 9 Rule 13 of C.P.C., before the learned Principal District Judge, Cuddalore. But there has been a delay and to condone the same I.A.No.214 of 2013 was filed. The learned counsel further submits that the process may take few months. He therefore wanted this Court to give the Revision petitioners some breathing time to work out their remedy before the learned Principal District Judge, Cuddalore.

7. I find considerable force in the said request. Therefore, the learned Principal District Judge, Thanjavur, is directed to keep the E.P.No.155 of 2013 in abeyance and on hold for a period of six months from the date of receipt of a copy of this order. The E.P. No.155 of 2013 can be resumed based on the outcome of the setaside proceedings before the learned Principal District Judge, Cuddalore.

8. Subject to this relief and directions, the Civil Revision petition stands disposed of.

9. The learned counsel appearing for the Revision petitioners fairly submitted that the amount of 30% deposited already may



remain, as such till the conclusion of the Execution proceedings. The amount of 30% deposited by the Revision petitioners can remain in Court deposit in an interest bearing account, till the execution proceedings get concluded.

No costs. Consequently, connected Miscellaneous petition is closed.

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Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The Principal District Judge,
Thanjavur.
2. The Principal District Judge,
Cuddalore.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai. 2COPIES

: 1 CC TO Mr.B.THANGA ARAVINDH , ADVOCATE IN SR No.79540.

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