



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP (NPD) (MD) .No.645 of 2013
and
M.P (MD) .No.1 of 2013

Muniyandi (died)

1.Sagunthalarani
2.Sobana
3.Prasad
4.Gobinath

... Petitioners

Vs.

Life Insurance Corporation of India,
rep by its Manager,
Madurai Division.

... Respondent

Prayer : Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair and decretal order dated 31.01.2013 made in E.A.No.97 of 2010 in E.P.No.64 of 2009 in O.S.No.249 of 1999 on the file of the Sub Court, Uthamapalayam.

For Petitioners : Mr.T.Vadivelan
For Respondent : Mr.S.Karthik
for M/s.Profex Associates

O R D E R

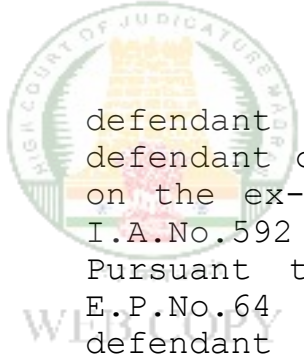
This Civil Revision Petition is filed against the order dated 31.01.2013 passed in E.A.No.97 of 2010 in E.P.No.64 of 2009 in O.S.No.249 of 1999 on the file of the Sub Court, Uthamapalayam.

2.The brief facts, which are necessary for the disposal of this Civil Revision Petition, are as follows:-

(i) The respondent/LIC has filed the suit in O.S.No.249 of 1999 on the file of Sub-Court, Periyakulam, for recovery of a sum of Rs.1,53,530.50/- and for subsequent interest at the rate of 15.5% per annum and for consequential relief including the one for attachment of the property mortgaged with the respondent and for personal decree against the defendant for the balance.

(ii) The important facts, which are admitted in this case are as follows:-

The suit was filed on 01.09.1999. However, the sole



defendant in the suit died on 14.11.1999. Even though the sole defendant died, an ex-parte decree was passed on 30.04.2001. Based on the ex-parte decree, the final decree application was filed in I.A.No.592 of 2001 and final decree was passed on 12.12.2003. Pursuant to the final decree, execution petition was filed in E.P.No.64 of 2009. At that time, the legal heirs of the sole defendant filed execution application in E.A.No.97 of 2010 under Section 47 CPC questioning the executability of the decree in O.S.No.249 of 1999.

3.It is the contention of the revision petitioners that the decree, which was obtained against the dead person, is null and void and not executable. Since the decree has been passed against the dead person, law is also settled that the decree cannot be enforced. However, the Lower Court has taken an erroneous view of the core issue and dismissed the petition by order dated 31.01.2013. Aggrieved against the order passed by the Sub-Court, Uthamapalayam, the above Civil Revision Petition has been filed by the legal heirs of the sole defendant.

4.There is no dispute with regard to the fact that the suit was filed only on 01.09.1999 and the defendant died on 14.11.1999. The ex-parte preliminary decree that was passed on 30.04.2001, is a nullity. The Lower Court is of the view that the death of the sole defendant was not informed at the appropriate time.

5.Taking into consideration the fact that the fourth petitioner, namely, P.W.1 in E.A.No.97 of 2010, has admitted in his cross-examination that he was prepared to pay the amount to the Bank, the petition filed by the legal heirs of the deceased defendant under Section 47 CPC was dismissed. The approach and decision of the Lower Court cannot be sustained having regard to the well settled position of law. The ex-parte preliminary decree in O.S.No.249 of 1999 on the file of the Sub Court, Uthamapalayam is a nullity, since it is a decree against the dead person. Unless the proceedings were initiated to set aside the abatement, the suit cannot be revived. Hence, the Civil Revision Petition is liable to be allowed and the order of the executing Court in E.A.No.97 of 2010 in E.P.No.64 of 2009 in O.S.No.249 of 1999 is set aside. However, it is open to the respondent in this civil revision petition to proceed against the revision petitioners, who is the legal heir of the deceased defendant as per law.

6.Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/



The Subordinate Judge,
Uthamapalayam.

+ 1 CC TO Mr.S.KARTHIK, ADVOCATE IN SR No. 73784
+ 1 CC TO Mr.T.VADIVELAN, ADVOCATE IN SR No. 73955

RMK

TE/PN/SAR-3 : 26/07/2018 : 3P/4C

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