



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.07.2018

CORAM

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P.(MD).No.976 of 2013(PD)
and
MP(MD).No.1 of 2015

1.Sudhir Kumar
2.Sunil Kumar
3.Sunith Kumar
4.Sugith Kumar

.. Petitioners/Petitioners/Plaintiffs

Vs

Gopi (Died)
1.Chandrika
2.G.Michel(died)
3.M.Thankan

(R2 and R3 are impleaded vide order
dated 24.06.2015 made in M.P.(MD).No.1 of 2013)

4.R.Pushpanjali
5.Aloysius M.P
6.Anusha M.P
7.Anshy M.P
8.Ahino M.P

.. Respondents/2nd Respondent/2nd Defendant

(R4 to R8 are brought on record as lrs
of the deceased 2nd respondent vide
order dated 07.09.2015 made in M.P.(MD).No.1 of 2015)

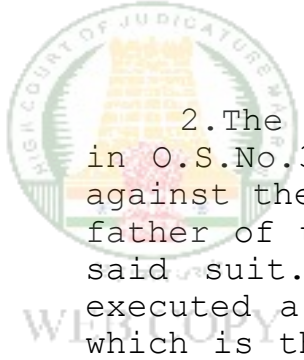
Prayer: Civil Revision Petition filed under Article 227 of the
Constitution of India, against the fair and decreetal order dated
27.08.2012 passed in E.P.No.50 of 2010 in O.S.NO.357 of 1996 on the
file of the Principal District Munsif Court, Kuzhithurai.

For Petitioner : Mrs.J.Anandhavalli

For Respondent : Mr.K.N.Thambi

O R D E R

This Civil Revision Petition is directed against the order
passed by the learned Principal District Munsif, Kuzhithurai in
E.P.No.50 of 2010 in O.S.No.357 of 1996.



2.The revision petitioners are the sons of one Gopi. The suit in O.S.No.357 of 1996 came to be filed by the revision petitioners against their father, for maintenance. It is not in dispute that the father of the revision petitioners died, during the pendency of the said suit. However, the father of the revision petitioners had executed a sale deed dated 28.04.1994 in respect of the property, which is the subject matter of the execution proceedings, in favour of the respondents 2 and 3 in the civil revision petition. Since the second respondent died during the pendency of the civil revision petition, their legal heirs viz., respondents 4 to 8 have been impleaded as respondents. It is to be seen that the present civil revision petition is filed against the mother of the revision petitioners and the purchasers of the property.

3.The suit in O.S.No.357 of 1998 for maintenance, was filed by the revision petitioners, who are then minors and represented by their mother viz., the first respondent in the civil revision petition. After the death of the revision petitioners' father, who is the sole defendant in the suit for maintenance, the first respondent in her individual capacity impleaded herself as the legal representatives of the deceased defendant in the suit. The said suit came to be decreed without impleading purchasers of the property, from the father of the revision petitioners, the execution petition was filed in E.P.No.50 of 2010 in O.S.No.357 of 1996 by the revision petitioners against their mother and the properties purchased by the respondents 1 and 2 was attached. The respondents 1 and 2 in the civil revision petition filed a claim petition under Order 21 Rule 58 and 59 of C.P.C., for raising attachment, as the property was sold even before the suit was filed. The said petition was allowed holding that there was no order of attachment, when the property was sold and that the decree in O.S.No.357 of 1996 was obtained in collusion with the second defendant. It was further held that the attachment in the earlier proceeding in I.O.P.No.8 of 1992 was not renewed when the said petition was dismissed for default.

4.It is seen that, the first respondent in the civil revision petition viz., the mother of the revision petitioner was impleaded as the legal representative of the father of the revision petitioners in the suit, ignoring the fact that the claim for maintenance itself is only against the first defendant. It is not in dispute that the suit came to be dismissed on 01.04.2004 for non-prosecution. Later, it was restored and after the death of the first defendant, the suit was proceeded as against the second defendant, who is the first respondent in the civil revision petition. Since the second defendant was set aside on 03.07.2008, an aside decree was passed on 10.11.2008. Ignoring the fact that the suit, which is for maintenance, stood abated upon the death of the father of the revision petitioners, the first respondent in this civil revision petition came on record by impleading herself as legal representatives of the deceased and got a decree for maintenance to proceed against the properties of the deceased first defendant.



5. After considering the entire evidence, the Executing Court allowed the claim petition in E.A.No.215 of 2010 and consequently dismissed the execution petition in E.P.No.50 of 2010 as the properties are held to be properties of claim petitioners. The respondents 2 and 3 in this civil revision petition are the claim petitioners, who are the purchasers of the property in the year 1994. Since the respondents 2 and 3 have independent right as purchasers of the property, when there was no attachment, the order of lower Court in dismissing the Execution Petition is proper. The order in E.A.No.215 of 2010 in E.P.No.50 of 2010 in O.S.No.357 of 1996 has become final.

6. As a result, this Court find no merit in the civil revision petition. Hence, this civil revision petition is dismissed. No costs. Consequently, connected M.P., is closed.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar(CS-II)

To

The Principal District Munsif,
Kuzhithurai.

COPY TO:

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.K.N.Thambi, Advocate SR.No. 73578

+1cc to M/S.J.Anandhavalli, Advocate SR.No. 73133

C.R.P. (MD) .No.976 of 2013(NPD)

and

M.P. (MD) .No.1 of 2015

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ns

JM/SKN RSK/SAR 2/01.08.2018/3P/6C