

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.12.2019
PRONOUNCED ON : .12.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.No.1784 of 2009
and
M.P.No.1 of 2009

1.Chinnammal @ Subbathal

2.Kaliammal

3.Minickam

4.Pechimuthu

...Petitioners/Third parties

.. Vs ..

1.R.Krishnan

... 1st Respondent/Plaintiff

2.M.Palanisamy

... 2nd Respondent/
2nd Defendant

PRAYER: Civil Revision Petition is filed under Section 115 of CPC, against the order and decretal order dated 18.06.2008, made in E.P.No.72 of 2005 in O.S.No.247 of 1991, on the file of the learned District Munsif, Pollachi.

For Petitioners : Mr.T.M.Naveen
for Mr.K.P.Jotheeswaran

For R1 : Mr.Ma.P.Thangavel

For R2 : No appearance

JUDGMENT

This Civil Revision Petition is filed by the third parties to the suit, who are legal heirs of the first defendant in the suit against the order dated 18.06.2008, passed in E.P.No.72 of 2005 in O.S.No.247 of 1991, by the learned District Munsif, Pollachi.

2 The first respondent herein has filed a suit in O.S.No.247 of 1991, seeking relief of declaration of title and for permanent injunction and also for recovery of possession of 17 cents and after trial, the suit was dismissed. Hence, the plaintiffs therein have filed an appeal in A.S.No.140 of 1994, which was allowed on 14.06.1996. Thereafter, the decree holder viz., Krishnan filed a petition in E.P.No.72 of 2005, against the deceased/first respondent viz., Subbaiah and his legal heirs stating that Subbaiah died after the decree granted by the Lower Appellate Court and in the said EP filed under Order XXI Rule XXXV for delivery of possession, these petitioners are ordered to be included as legal representatives of the deceased/first defendant, viz., the legal heirs of the first judgment debtor and also ordered for delivery of possession by the learned District Munsif, Pollachi. As against the

said order, they have preferred this Civil Revision Petition.

3 The learned counsel for the revision petitioners/third parties would state that the first defendant Subbaiah Gounder died on 20.03.1996 during the pendency of the appeal in A.S.No.140 of 1994 and hence, the judgment passed in A.S.No.140 of 1994 on 14.06.1996, against the dead person, being a decree against the dead person, the same is null and void and hence, he seeks to set aside the order passed in the execution proceedings. It is also brought to the notice of this Court that the first respondent herein after obtained the ex-parte decree as early as on 14.06.1996, waited for about nine years for filing the execution petition and filed E.P.No.75 of 2005, on 13.02.2005 i.e., nearly after nine years of pending decree. The learned counsel also submitted that parties are living as neighborhood.

4 Heard the learned counsel for the petitioner and the learned counsel for the first respondent and also perused the materials placed on record.

5 As seen from the records, it is clear that the suit in

O.S.No.247 of 1991 was dismissed and as against which, A.S.No.140 of 1994 was filed by the plaintiffs and during the pendency of the appeal, the contesting defendant Subbaiah Gounder died on 20.03.1996, as per the birth certificate extract issued by the Pollachi Municipality, an ex-parte decree was granted on 14.06.1996 against the dead person. The decree against the dead person is nullity in law and further, in the decision reported in **2017 (13) SCC 414 – [Gurnam Singh (dead) through Legal Representatives and others Vs. Gurbachan Kaur (dead) By Legal Representatives]**, the Hon'ble Supreme Court of India has held as follows:

"Civil Procedure Code, 1908 Or.22 Rr.3 & 4 and 9. Failure to bring LR's of dead parties on record within stipulated time. When LR's of deceased litigant not brought on record within 90 days, then such proceedings stand abated. Any decision in favour of and/or against dead person renders such decision nullity. Such decrees, being nullity, can be challenged at any time whenever they are sought to be enforced. Method of reviving matter once it stands abated, explained."

6 Further, in the decision reported in **AIR 1992 MAD 159** – **[Elisa and others Vs. A.Doss]**, wherein, this Court has held as follows:

"S.50 – Decree obtained against a dead person without complying with O.22, R.4(4) Civil P.C.is a nullity and not executable against legal representatives of deceased defendant."

7 It is seen that though the ex-parte decree in A.S.No.140 of 1994 was granted on 14.06.1996, the decree holder, for the reasons best known, filed Execution Petition on 13.02.2005 only, wherein, recovery of possession is one of the relief also assumes significance.

8 Taking into consideration the entirety of the matter, this Court is of the considered view that the delivery ordered in E.P.No.72 of 2005 is not sustainable in law. Accordingly, the order passed in the said E.P.No.72 of 2005 on 18.06.2008 is hereby set aside. The decree was passed in A.S.No.140 of 1994 against the dead person and the petitioners herein are at liberty to move the Lower Appellate Court for appropriate remedy.

RMT.TEEKAA RAMAN, J.

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9 In the result, the Civil Revision Petition stands allowed and the order passed in E.P.No.72 of 2005 in O.S.No.247 of 1991, by the learned District Munsif, Pollachi, is hereby set aside. No costs. Consequently, connected miscellaneous petition is closed.

.12.2019

Index : Yes / No

Internet : Yes

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To

The learned District Munsif,
Pollachi.

Pre-Delivery Judgment
in
CRP.No.1784 of 2009
and
M.P.No.1 of 2009

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