

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P.(NPD)Nos.352, 353 & 354 of 2009

and

M.P.Nos.1, 1 & 1 of 2009

C.R.P.(NPD)No.352 of 2009:

1.E.M.Kannappan
2. Venkatalakshmi .. Petitioners/Respondents 1 & 5

Vs.

1. G.Shyamala
2. G.Srinivasan
3. G.Govindaraj
4. G.Raghukumari
5. G.Banumathi
6. Amudheeswari .. Respondents/Petitioners 2 to 7

C.R.P.(NPD)No.353 of 2009:

1.E.L.Balamurugan
2. E.L.Santhanam
3. E.L.Doss
4. E.L.Rosekutty ... Petitioners/Respondents 7 to 10

Vs.

1. G.Shyamala
2. G.Srinivasan
3. G.Govindaraj
4. G.Raghukumari
5. G.Banumathi
6. Amudheeswari ... Respondents/Petitioners 2 to 7

C.R.P.(NPD)No.354 of 2009:

L.Ragini

... Petitioner/11th Respondent

Vs.

1. G.Shyamala
2. G.Srinivasan
3. G.Govindaraj
4. G.Raghukumari
5. G.Banumathi
6. Amudheeswari

... Respondents/Petitioners 2 to 7

COMMON PRAYER: These Civil Revision Petitions filed under Section 115 of the Civil Procedure Code, to set aside the order dated 06.11.2008, made in E.A.No.33 of 2007 in E.P.No.154 of 1993, on the file of the District Munsif court, Tambaram.

For Petitioners in

both revisions : Mr.R.Loganathan

For RR4, 5 & 6 in

both revisions : Mr.S.Venkata Krishna Kumar

For R2

: Mr.S.Umapathy

For R3

: Notice Served Service Awaited

COMMON ORDER

सत्यमेव जयते

These three Civil Revision Petitions have been filed against the orders passed by the trial Court in E.A.No.33 of 2007 in E.P.No.154 of 1993, to recognize the legal heirs of the original decree holder. Such application was opposed by the judgment debtors, on the ground that they cannot rely upon the Will and legal heirship certificate has not been properly filed before the trial Court. However,

the trial Court allowed the application as against which the present Civil Revision Petitions have been filed by the revision petitioners.

2. The original Execution Petition E.A.No.33 of 2007 in E.P.No.154 of 1993, was filed in the year 1993, the suit had been decreed for recovery of possession and mean profits and Execution Petition is pending from the year 1993 onwards. The decree holder died on 02.04.2006. After his death, an application was filed to recognize the legal heirs of the deceased decree holder and implead them as decree holders 2 to 7 in the Execution Petition and to record them as legal heirs of the deceased decree holder.

3. It is averred by the legal heirs namely the respondents herein, to the effect that though their father left behind them as legal representatives and he had executed a Will dated 11.03.2006, for abundant caution all legal heirs sought to be impleaded in the execution proceedings which was objected by the judgement debtor. Earlier occasion a challenge has been made for such impleading.

4. This Court set aside the order and remitted the matter once again to the Execution Court to decide the issue after giving

opportunity to both the parties, the above Civil Revision Petitions are remitted, on the ground that at the relevant point of time Executing Court passed a cryptic order. Therefore, in order to give an opportunity to both parties, the matter has been remitted again. Thereafter, Executing Court heard both sides and after giving opportunities. The application filed by the legal heirs of the decree holder to recognize them as a legal heirs allowed by its order dated 06.11.2008, against which these civil revisions filed.

5. Heard the learned counsel appearing for the revision petitioners and the learned counsel appearing for the respondents and perused the entire materials available on record.

6. It is the main contention of the revision petitioners that without establishing the Will in the probate proceedings, respondent cannot be recognized as legal heirs. Further, there was no need to include other legal heirs who were excluded in the Will. Therefore, it is the contention of the revision petitioners the order, the Executing Court allowing the application is not according to law. Heard the other side. According to them all the legal heirs have brought on record. The judgment debtor has no rights whatsoever to question the right of

legal heirs. Hence, submitted that the order of the trial Court does not require any interference.

7. I have perused the entire order. Admittedly, the suit has been filed in the year 09.11.1987 for recovery of possession. The decree holder is one Chandriah, who is the father of the respondents, it appears that Chandriah had filed an Execution Petition in E.P.No.154 of 1993. During the pendency of the petition, Chandriah died on 02.04.2006, therefore his legal heirs took out application to recognize them as a legal heirs to continue the execution proceedings.

8. In the above application also they have stated that though their father left behind a Will and excluded one of the legal heirs, for abundant caution they filed application to recognize all the legal heirs. Only when such allegations made to recognize them as a legal heirs as the respondents, the judgment debtors took advantage of the same and opposed such application, on the ground that without establishing the Will in probate proceedings they cannot be recognized as legal heirs in execution proceedings. The execution proceedings were stalled all these years.

9. In earlier occasion, they have filed Civil Revision Petitions Nos.2545, 2546 and 2547 of 2007, these Civil Revision Petitions were disposed on 26.08.2008, remitting back with direction that the Executing Court shall decide the issue after affording opportunities to both sides. Now, the Execution Court itself considering the legal heirs certificate and recognized them as a legal heirs, and as a second round of litigation, these Civil Revision Petitions are filed.

10. It is to be noted that the trial Court has rightly took note of the fact that the respondents are the legal heirs of Chandriah, decree holder and relied upon the legal heir certificate produced by them and therefore, once decree holder died, right to continue the proceedings always with the legal heirs. It is none of the business of the judgment debtor to question such rights. Whether the Will is true or valid is not the issue before the Execution Court. It is for the concerned legal heirs to establish the Will not by the judgment debtor.

11. Admittedly, all the legal heirs of Chandriah has filed an application to implead them in the Execution Petition in E.P.No.154 of 1993 to continue the execution proceedings. Therefore, judgment debtor has no right whatsoever to oppose such application. The

manner in which applications are filed clearly indicate, it is nothing but deliberate to avoid execution of decree. If such petitions are entertained in Court of Law the decree will not reach its logical conclusion.

12. Therefore, I am of the view that the order passed by the trial Court does not require any interference. The objections made by the judgment debtor nothing but malafide only to detent the decree. Hence, these Civil Revision Petitions are liable to be dismissed with cost of Rs.5,000/-.

13. Accordingly, these Civil Revision Petitions are dismissed. The Execution Court shall dispose of the Execution Petition in E.P.No.154 of 1993, within two months from the date of receipt of a copy of this order and the Execution Court is also not to entertain any such frivolous petitions filed by the judgment debtor in the Execution Court. The Registry is directed to send all the records to the Execution Court forthwith.

20.02.2019

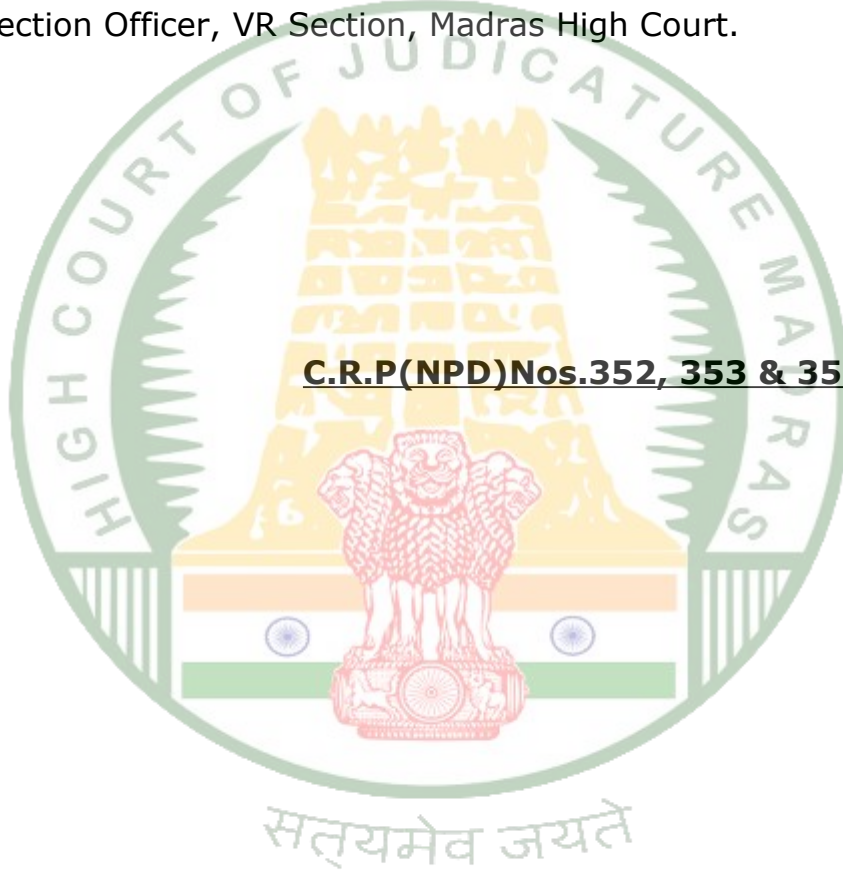
Index: Yes/No
Speaking/ Non-Speaking
ssi

N.SATHISH KUMAR, J.

ssi

To

1. The District Munsif court, Tambaram
2. The Section Officer, VR Section, Madras High Court.



C.R.P(NPD)Nos.352, 353 & 354 of 2009

20.02.2019

WEB COPY