

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.10.2019

Pronounced on : 15.10.2019

Coram:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.R.P.(NPD)No.4780 of 2011

Dr.E.Venkatesan (Died)

1.E.Arumugham

2.E.Ganesan (Died)

3.Sivagami

4.Iswarya

5.Karthikraj

..

Petitioners /
Plaintiffs

[Petitioners 3 to 5 brought on record
as LR of the deceased 2nd petitioner
vide order dated 16.04.2018 made in
M.P.No.2 of 2015 in
C.R.P.[NPD] No.4780 of 2011]

versus

1.M/s.Swami Constructions,

Rep.by its Partner Kuppusamy (Died)

2.Vasanthi

[Respondent No.2 brought on record
as LR of the deceased 4th respondent
vide order dated 25.09.2013 made in

M.P.No.1 of 2013 in

C.R.P.[NPD] No.4780 of 2011]

3.Manjula

4.Baskaran (Deceased)

5.Santhi

6.B.Srijanani

..

Respondents /
Defendants

[Respondent No.6 brought on record
as LR of the deceased 4th respondent

vide order dated 25.09.2013 made in
M.P.No.2 of 2013 in
C.R.P.[NPD] No.4780 of 2011]

PRAYER: Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal order dated 02.02.2011 made in E.A.No.43 of 2010 in E.P.No.76 of 2003 in O.S.No.832 of 1997 on the file of the learned Principal District Munsif, Alandur.

For Petitioners : Mr.V.Lakshminarayanan
for Mr.T.Dhanyakumar
For Respondent Nos.2,3 & 5 : Mr.A.M.Amutha Ganesh
for Mr.M.Prakash Kumar
For Respondent No.6 : No Appearance

ORDER

This Civil Revision Petition has been preferred as against the order dated 02.02.2011 made in E.A.No.43 of 2010 in E.P.No.76 of 2003 in O.S.No.832 of 1997 on the file of the learned Principal District Munsif, Alandur.

2. Brief facts leading to the filing of this Petition are that, on 15.09.1991, Dr.E.Venkatesan (deceased) along with the petitioners 2 and 3 herein had filed a suit in O.S.No.832 of 1997 as against the first respondent partnership firm and also against one Kuppuswamy (deceased) on the file of the learned Principal District Munsif, Alandur, for the relief of permanent injunction, restraining the defendants, their men, agents, servants, relatives and anybody claiming under them from interfering thereby trespassing into the

plaintiffs peaceful possession and enjoyment of the suit property. Further, they prayed one another relief, restraining the defendants, their men, agents, servants, relatives and anybody claiming under them not to alienate or encumber the suit property to any third parties. The learned Principal District Munsif, Alandur, in its judgment and decree dated 16.12.2002, had allowed the suit in favour of the petitioners / plaintiffs and ultimately granted *ex parte* decree in their favour.

3. Based on the said decree, the petitioners/plaintiffs in the suit have filed Execution Petition in E.P.No.76 of 2003, in which, they prayed to issue notice under Order 21 Rule 22 of the Code of Civil Procedure to the respondents / judgment debtors to proclaim the decree of permanent injunction and pass such other order. During the pendency of the above said Execution Petition, the second respondent / Kuppuswamy was died on 11.02.2009 and thereby, the petitioners herein had filed an Application in E.A.No.43 of 2010 in E.P.No.76 of 2003 in O.S.No.832 of 1997 to implead them as legal representatives of the deceased Kuppuswamy. The learned Principal District Munsif, Alandur, in its order dated 02.02.2011, had dismissed the said Application.

4. Aggrieved over the said findings, the petitioners are before this Court with the present Civil Revision Petition.

5. The learned counsel appearing for the petitioners would contend that, since the deceased Kuppuswamy was an active partner in the first respondent partnership firm, the cause of auction arised in respect to the suit filed by the petitioners had also been succeeded on the legal representatives of the deceased Kuppuswamy. The learned Principal District Munsif, Alandur, without considering the same, had dismissed the application filed by the petitioners, which is erroneous in law.

6. On the other hand, the learned counsel appearing for the respondents 2, 3 and 5 would contend that, in the first respondent firm, apart from the deceased Kuppuswamy, the other respondents are alive. The petitioners without taking any steps to implead them as a party to the proceedings, filed the present Application only to implead them as legal representatives of the deceased Kuppuswamy, which is nothing but a vengeance having by the petitioners as against the deceased Kuppuswamy.

7. I have considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. The learned counsel appearing for the petitioners has relied on the judgment of the Kerala High Court in **KATHIYAMMAKUTTY UMMA vs. THALAKKADATH KATTIL KARAPPAN AND OTHERS** reported in **AIR 1989 Ker 133**, in which, the same issue has been decided as follows;

“5..... In Manilal v. Kikabhai, AIR 1931 Bom 482 a single Judge of the Bombay High Court following the aforesaid decision had held that where a decree for injunction had been obtained against the father, the son not being joined as a party, and if the father died during the pendency of execution proceedings, the decree could be enforced under S. 50 of the Code against the son as his legal representative. In Ganesh v. Narayan, AIR 1931 Bom 484 another Division Bench of the same High Court followed the decision in Amritlal's case (cited supra).”

9. Further, the learned counsel relied on the judgment of the Andhra Pradesh High Court in **GUDIKANDULA NARASIAH vs. GUDIKANDULA VEERAAIAH** and others reported in **2001 (4) ALT 743**, in which, it has held as

follows;

“6.....whether a decree for permanent injunction be put in execution against the legal representatives of the judgment-debtor. It is no doubt true that an action for permanent injunction is an action in personam, but that does not mean that a broad proposition can be laid down that under no circumstances a decree for perpetual injunction can be executed against the legal representatives of the defendants-judgment debtors. When once a decree for perpetual injunction was suffered by the defendants-judgment debtors, I am of the opinion that the legal representatives who normally step into the shoes of the original parties are also bound by such a decree.”

10. More than that, the learned counsel for the petitioners had relied on the judgment of our Hon'ble Apex Court in **RAVI PRAKASH GOEL vs. CHANDRA PRAKASH GOEL** reported in **(2008) 13 SCC 667**, in which, it has held as follows;

“29..... The word “party” as used in the partnership deed does not exclude inclusion of legal heirs, legal representatives, etc. as being canvassed

by the respondents. Thus, in our opinion, in view of the provisions of Sections 40 and 46 of the Partnership Act read with Section 40 of the Arbitration Act, the appellant has a legal right to commence arbitration by moving an application under Section 11 of the Arbitration Act in the High Court as in our view, the right to sue survives on him as legal representative of the deceased Dulari Devi and he is entitled to invoke Clause 13 of the partnership deed.”

11. Now applying the principles laid down by the judgments relied on by the petitioners, it is seen that the cases decided by the Andhra Pradesh High Court and Kerala High Court are not in respect to the partnership firm. In otherwise, our Hon'ble Apex Court has decided the issue, as the legal representatives of the decree holder are entitled to initiate proceedings under the provisions of Arbitration and Conciliation Act. The factual aspect set out as above is entirely different with the case in our hand. Before this Court, the petitioners had filed a suit and seeks the relief of permanent injunction against the partnership firm. In fact, the deceased Kuppuswamy was added as a respondent only in the capacity of partner in the first respondent firm.

12. In this occasion, in order to decide the contention raised by the learned counsel for the petitioners, it is necessary and useful to consider Section 6 of the Partnership Act. In fact, the said Section deals with liability of the estate of a deceased partner. According to the said section, unless a new partnership is formed, the representatives of a deceased partner cannot be made jointly liable with the surviving partners. Liability cannot be imposed upon an heir unless he assents to it. In order to render an heir liable to the other partners, it is essential to establish that the heir had come in and became a partner, or if there exists a provision in the partnership deed, it is further necessary to show that he had, in the circumstances of the case, taken advantage of the liberty, reserved in his favour, of joining the partnership in the place of the partner dying. Where the heirs of a deceased partner are minors, it is impossible for them to take upon themselves the liability of the partnership without a conscious act on their part, if they are of the age of discretion or on the part of their guardian.

13. Therefore, the said situation reveals the fact that the cause of action having by the petitioners for filing the suit is not survived on the legal representatives of the deceased partner. In the said circumstances, the learned Principal District Munsif, Alandur, had also came to the conclusion that

the legal representatives of the deceased partner cannot be held responsible for the act committed by his father on behalf of the partnership firm. So, the findings arrived at by the trial Court is not having any material irregularity.

14. In the result, this Civil Revision Petition stands dismissed.

However, there shall be no order as to costs.

15.10.2019

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

sri

To

The Principal District Munsif,
Alandur.

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R.PONGIAPPAN, J.,
sri



Pre-delivery Order made in
C.R.P.(NPD)No.4780 of 2011

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15.10.2019
[1/2]