

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	23.07.2019
Pronounced On	09.08.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(NPD).No.1591 of 2015

and

M.P.No.1 of 2015

K.Kumarasamy

.. Petitioner

vs

M/s.Senniappa Ramasamy Mudaliar
Educational and Health Charitable Trust,

Rep.by its Managing Trustee

S.R.Kanagasabapathy (died),

Rep.by its present Managing Trustee

S.R.Kumarashanmugam,

S/o.Senniappa Ramasamy Mudaliar,

Door No.36, Varadharajan Street,

Behind Power House, Erode – 9.

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the fair and final order dated 06.01.2015 passed in E.A.No.14 of 2012 in E.P.No.117 of 2007 in O.S.No.500 of 1997 on the file of I Additional District Munsif Court, Erode.



WEB COPY

For Petitioner : Mr.S.Kaithamalai Kumaran

For Respondent : No appearance

ORDER

Heard Mr.S.Kaithamalai Kumaran learned counsel for the petitioner. There is no representation for the respondent despite service of notice on the respondent and the respondent. The name of the respondent is printed in the cause list. Hence this case is taken up for hearing in their absence.

2.The present Civil Revision Petition has been filed to set aside the fair and decretal order dated 06.01.2015 passed in E.A.No.14 of 2012 in E.P.No.117 of 2007 in O.S.No.500 of 1997 by the I Additional District Munsif Court, Erode.

3.The respondent trust had filed O.S.No.500 of 1997 to evict the petitioner from the premises and to recover the arrears of rent. The respondent trust was represented by Managing Trustee S.R.Kanagasabapathy. The petitioner claims to have vacated the premises on 29.09.2006.

4. Thereafter, E.P.No.117 of 2007 filed by the respondent to recover the arrears of rent together with interest and cost.

5. During the pendency of the said Execution proceedings, the respondent's Managing Trustee S.R.Kanagasabapathy died. After the death of the Managing Trustee S.R.Kanagasabapathy of the respondent Trust, S.R.Sivakumaran (2nd defendant) became the Managing Trustee of the respondent.

6. The 2nd defendant S.R.Sivakumaran filed E.A.No.46 of 2010 in E.P.No.117 of 2007 under Order 21 Rule 16 r/w Section 151 of CPC to substitute his name the place of the deceased Managing Trustee of the respondent namely S.R.Kanagasabapathy. However, by an order dated 20.09.2010 the E.A.No.46 of 2010 was dismissed on the ground that the said S.R.Sivakumaran failed to produce documents to substantiate that he had become to the Managing Trustee of the respondent Trust.

7. Thereafter, another attempt was made in the same in E.A.250 of 2010 in E.P.No.117 of 2007 by S.R.Sivakumaran. It was dismissed as withdrawn on 22.10.2010.

8.After the dismissal of the E.A.No.250 of 2010, the said S.R.Sivakumaran (2nd defendant) also passed away on 18.05.2011. After the death of S.R.Sivakumaran, S.R.Kumarashanmugham (4th defendant) was appointed as the Managing Trustee of respondent Trust.

9.Under these circumstances, E.A.No.14 of 2012 in E.P.No.117 of 2007 filed to allow the said S.R.Kumarashanmugham (4th defendant) to represent the respondent Trust (1st plaintiff).

10.By the impugned order of the court has allowed the application on the strength of deposition of two independent witness and Ex.P4.

11.Aggrieved by the same, the present Civil Revision Petition has been filed by the petitioner (1st defendant/judgment debtor).

12.The learned counsel for the petitioner submitted that the impugned order passed by the lower court allowing substitution the name of deceased Managing Trustee of the respondent with the name of S.R.Kumarashanmugham (4th defendant) under Order XXI

Rule 16 of CPC was not sustainable as the said provision is applicable only where there is a transfer by assignment of the decree either by writing or by operation of law, in which case the transferee may apply for execution of the decree to the court which passed it and such decree may be executed in the same manner and subject to the same condition as if the application was made by the decree holder.

13.It is submitted that the order has been passed without assigning any reason and that the application was barred under Section 11 of CPC and that 4th defendant in the suit has resorted to forum shopping.

14.Earlier by a judgment and decree dated 30.10.1998, the petitioner was directed to vacate the suit premises. The court had also awarded cost apart from further damages at the rate of Rs.1,500/- per month from the date of suit to the date of actual delivery of the suit schedule property.

15.The petitioner claims to have vacated the suit property though belatedly on 25.08.2006. Therefore, the respondent Trust filed E.P.No.117 of 2007 and claimed arrears of the damages

awarded together with the cost. The said proceeding was also contested by the petitioner.

16.During the pendency of the said Execution Proceedings, the Managing Trustee S.R.kanagasabapathy passed away. Therefore, the 2nd defendant filed application to substitute himself in the place of the deceased Managing Trustee S.R.Kanagasabapathy. However, the said application was dismissed for want of proof.

17.Thereafter, one more attempt was made vide E.A.No.250 of 2010 but the said application was dismissed as withdrawn. Thereafter, 4th defendant filed application to represent the respondent Trust.

18.In **Paianiappa Chettiar** vs **Valliammai Achi** I.L.R.50 Mad 1 = 25-L.W.354 the transferee decree-holder in a suit on the Original Side of this Court applied for execution of the decree. When the application was pending he died, and his widow made an application that she should be brought on record as his representative and be permitted to continue the execution petition filed by him.

19.The court passed an order and allowed her request. In appeal, this order was set aside. The learned Judges held that it followed from the provisions of O. 22 of the Code of Civil Procedure that the only course open to the legal representative in the circumstances was to file a separate and fresh application.

20.In **Venkatachalam Chetti vs Ramaswami Servai (dead) and Ors**, AIR 1932 Mad 73, a Full Bench of this Court has observed that the practice in Indian Courts was always to allow the legal representative of a deceased decree-holder to continue the pending execution petition filed by him by substituting his name in it in the place of the deceased decree-holder and then to proceed with the execution. The Court also observed that in Madras as a matter of 'practice' the legal representative of a deceased decree-holder who dies pending an execution application filed by him was always allowed prior to the decision in *Palaniappa Chettiar v.Valliammai Achi I.L.R.50 Mad 1 = 25-L.W.354* to continue the pending petition by substituting his name without being put to the necessity of filing a fresh execution application.

21.The Full Bench of this Court further held as follows:-

If, as I have said, nothing in R. 3 of O. 22 applies to execution proceedings, then the question

whether the legal representative of a decree-holder can be substituted in the pending execution application and be allowed to proceed with that application or whether he should be compelled to file a fresh application should be considered in the light of the other provisions of the Code. If R. 3 of O. 22 does not apply, it is argued that there is no procedure provided in the Code for bringing on record the legal representative of a deceased decree-holder in execution proceedings. It is true that there is no specific machinery in the Code for that purpose, but does it necessarily follow from this, that the Code prohibits the legal representative from making an application to continue the pending petition after substituting his name in it? I think not. If R. 3 does not apply, then obviously there can be no objection for proceeding under Sect. 146 of the Code and O. 21, R. 16. Under Sect. 146 there being no other procedure provided, a legal representative of a decree-holder may make an application which may be made by the decree-holder and under O. 21, R. 16 where a decree is transferred by assignment or operation of law as happens in the case of the death of a decree-holder, the transferee may apply for the execution of the decree. Cases have held that where a decree-holder dies or transfers his decree pending the execution application filed by him, then the transferee decree-holder including his heir is entitled under O. 21, R. 16 to apply for continuing the pending execution application by substituting his name in it and that such an application is not to be considered as a fresh execution application.

22.The status of the respondent being the trust has not been disputed by the petitioner. The petitioner has also not brought on record to show that the trust has been dissolved.

23.The order of the Court allowing the said S.R.Kumarashanmugham (4th defendants) to represent the respondent Trust in the capacity of Managing Trustee of the respondent Trust cannot be interfered.

24.Parties to the proceedings who were shown as the trustees are entitled to continue with the execution proceedings in the place of deceased original Managing Trustee as the affairs of the Trust has to be carried on. It is not for the judgment debtor to question the locus standi of a person claiming himself to be a Trustee in place of the deceased Managing Trustee in absence of any direct evidence to the contrary.

25.When earlier orders were passed in E.A.No.46 of 2010 and E.A.No.250 of 2010, there were no evidence to show that the S.R.Sivakumaran became the Managing Trustee of the respondent Trust after the death of original Managing Trustee S.R.kanagasabapathy Mudaliar. However, while passing the impugned order, the court has considered evidence produced by the said S.R.Kumarashanmugham.

C. SARAVANAN J.,

jen

26.In this case, the said S.R.Kumarashanmugham has also produced the records to show that he was appointed as the lifetime Trustee of the respondent. Therefore, there is no merits in the present Civil Revision Petition.

27.The present Civil Revision Petition therefore stands dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

09.08.2019

Index : Yes/No
Internet : Yes/No
jen

To

1.The I Additional District Munsif Court,
Erode.

2.The Section Officer,
V.R.Section, High Court, Madras.

Pre-Delivery order
in

C.R.P.(NPD).No.1591 of 2015
and
M.P.No.1 of 2015