

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (NPD)No.1548 of 2013

M. Duraisamy .. Petitioner/Decree Holder/Plaintiff

Vs.

1.R.Kirupa
2.Dany John
3.Charles
4.Julie

.. Respondent/Judgment Debtors/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed in I.A.No.91 of 2012 in E.P.No.158 of 2011 in O.S.No.176 of 2010 on the file of the Additional Sub-Judge, Erode.

For Petitioner : Ms. V. Srimathi

For Respondents : Mr.V.S.Kesavan

ORDER

This Revision Petition has been filed against the order in I.A.No.91 of 2012 in E.P.No.158 of 2011 in O.S.No.176 of 2010 on the file of the Additional Sub-Judge, Erode.

2. The brief facts leading to file this revision is as follows:

2.(a) The Revision Petitioner is the Plaintiff and he filed a suit for specific performance to enforce the contract entered by the Defendant N.S.Manoharan, before the II Additional Sub-Judge, Erode. It appears that on 17.3.2011, when the suit came for hearing, the learned counsel appearing for the Defendant has reported no instructions thereby the Court set the defendants ex-parte. Thereafter, on the evidence produced by the Plaintiff, the suit was decreed exparte. In pursuance of the exparte decree, the Plaintiff has deposited a sum of Rs.4,00,000/-in the Court. Thereafter, he took up execution petition in E.P.No.158 of 2011. During the execution proceedings, the counsel who has appeared for the defendants filed a memo stating that the Defendant died on 02.03.2011 much before the decree. Thereafter, it appears that the Revision Petitioner has filed an application to implead the legal heirs of the Judgment Debtor. At the time the Executing Court dismissed the application and consequently, dismissed the E.P. on the same day. Now the same has been challenged.

3. Heard the learned counsel appearing for the Revision Petitioner as well as the Respondents.

4. The facts are not in dispute as to the filing of the suit. The

fact remains that on 17.3.2011 the counsel appearing for the Defendant has simply reported no instructions. He did not bring it to the notice of the court that the Defendant died on 2.3.2011. It is to be noted that under Rule 10-A of Order 22 a duty is cast on the pleader appearing for the deceased party to give intimation of the same to the opposite party. But the counsel appearing for the Defendant has not brought to the notice of death of the defendant either to the Court or to the Plaintiff. On 17.3.2011 ex parte decree was passed. Only for the first time during the execution proceedings same counsel filed Memo on 20.4.2011 stating that the decree has been passed against the deceased person. Had the counsel for the Defendant brought to the notice of the court or Plaintiff, the Court would not have ventured into passing a decree against the deceased person. Merely because such a situation arose that cannot be taken advantage by the judgment debtors legal representatives or others to defeat the substantial right accrued to the party based on the agreement entered into by the defendant. Be that as it may. The right of the decree holder cannot be defeated only on the ground that the decree was passed against the deceased person. The counsel for the Defendant should have informed the death of the defendant to the decree holder as contemplated under law. But the same has not been done as the

decree against the dead person is nullity. This court is of the view that the Revision Petitioner can be given liberty to file an application in the suit to implead the LRs and also to set aside the abatement caused due to the death of the Defendant and implead the LRs of the Defendant for proper adjudication. If such application is filed by the the Plaintiff, the court viz., II Additional Subordinate Judge, Erode shall decide such application in setting aside the abatement and implead the Legal Representatives of the deceased defendant.

5. Taking into consideration of the fact that the death of the defendant has not been informed by the counsel on the date when the case was finally decided on 17.3.2011, the II Additional Subordinate Court shall entertain the application filed by the Plaintiff and decide the issue in accordance with law and the Revision Petitioner/Plaintiff shall file such application in O.S.No.176 of 2010 before the II Additional Subordinate Judge within one month from the date of receipt of copy of this Order. On such application being filed, the II Additional Subordinate Judge, Erode, shall decide the suit afresh. With this observation, the Revision is disposed of.

07.02.2019

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Note: Registry is directed to communicate a copy of this order to the II Additional Subordinate Judge, Erode.

To

II Additional Subordinate Judge,
Erode.



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N.SATHISH KUMAR, J.

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