

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(PD).No.4473 of 2013
and
M.P.No.1 of 2013

Subaiyan (Died)
1.Gannavalli
2.Kamalambal
3.Parvathi
4.Selvi Meenakshi Sundaram
5.Selvi Mangalanayagi

...Petitioners

Vs.

Kanagasabai (Died)
Subulakshmi (Died)
Muthusamy (Died)
1.Subramanian
2.Chidhambaram
3.Vijayalakshmi
4.Jagaseesan
5.Devaki
6.Sekar
7.Malathi

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 09.10.2012 made in E.A.No.186/2012 in E.A.No.210/2012 in E.P.No.59/2011 on the file of the District Munsif Court, Tiruvarur.

For Petitioners : Mr.J.Nandagopal

For Respondents : Mr.A.Muthukumar

ORDER

Challenging the order passed in E.A.No.186 of 2012 in E.A.No.210 of 2012 in E.P.No.59 of 2011 on the file of the District Munsif Court, Tiruvarur, the judgement debtors have filed the above Civil Revision Petition.

2. The Plaintiffs filed a suit in O.S.No.52 of 1990 for recovery of possession, which was decreed by the trial Court on 05.04.1991. Thereafter, the decree holders filed an Execution Petition in E.P.No.59 of 2011 on 04.11.2011, to execute the decree passed in O.S.No.52 of 1990. In the interregnum the sole decree holder passed away and his legal representatives were brought on record. Thereafter, the third decree holder, who is the legal representative of the plaintiff had also passed away. In these circumstances, the decree holders filed an application in E.A.No.186 of 2012 to set aside the abatement caused due to the death of the third decree holder viz., Muthusamy, along with a petition to bring on record his legal representatives. The Execution

Court, by order dated 09.10.2012, dismissed the application, against which, the judgment debtors have filed the above Civil Revision Petition.

3. It is settled position that under Order 22, Rule 12 of the Civil Procedure Code, the provisions of Rules 3, 4 and 8 of Order 22 of the Civil Procedure Code, shall not apply to the execution proceedings. In the case on hand, the decree holders have filed the application to set aside the abatement caused due to the death of the third decree holder. In spite of the provisions of Order 22, Rule 12 of the Civil Procedure Code, absolutely there is no necessity for filing the application to set aside the abatement caused due to the death of the decree holders in the execution proceedings.

4. In the judgement *reported in (1998) 3 SCC, 148 (V.Uthirapathi Vs. Ashrab Ali and others)* held as follows :

“11. Order 22 Rule 12 of the Code of Civil Procedure reads as follows :

“Order 22 Rule 12 : Application of order to proceedings - Nothing in Rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order”

12. In other words, the normal principle arising in a suit- before the decree is passed - that the legal

representatives are to be brought on record within a particular period and if not, the suit could abate, - is not applicable to cases of death of the decree-holder or the judgment-debtor in execution proceedings.

13. In Venkatachalam Chetti v. Ramaswami Servai a Full Bench of the Madras High Court has held that this rule enacts that the penalty of abatement shall not attach to execution proceedings. Mulla's Commentary on CPC [(Vol.3) p.2085 (15th Edn., 1997)] refers to a large number of judgments of the High Court and says :

“Rule 12 engrafts an exemption which provides that where a party to an execution proceedings dies during its pendency, provisions as to abatement do not apply. The Rule is, therefore, for the benefit of the decree-holder, for his heirs need not take steps for substitution under Rule 2 but may apply immediately or at any time while the proceeding is pending, to carry on the proceeding or they may file a fresh execution application.”

14. In our opinion, the above statement of law in Mulla's Commentary on CPC, correctly represents the legal position relating to the procedure to be adopted by the parties in execution proceedings and as to the powers of the civil Court.

15. It is clear, therefore, that if after the filing of an execution petition in time, the decree-holder dies and his legal representatives do not come on record - or the judgment-debtor dies and his legal representatives are not brought on record, then there is no abatement of the execution petition. If there is no abatement, the position in the eye of law is that the execution petition remains pending on the file of the execution court. If it remains pending and if no time-limit is prescribed to bring the legal representatives on record in execution proceedings, it is open in case of death of the decree-holder, for his legal representative to come on record at any time. The

execution application cannot even be dismissed for default behind the back of the decree-holder's legal representatives. In case of death of the judgment-debtor, the decree-holder could file an application to bring the legal representatives of the judgment-debtor on record, at any time. Of Court, in case of death of judgment-debtor, the Court can fix a reasonable time for the said purpose and if the decree-holder does not file an application for the aforesaid purpose, the Court can dismiss the execution petition for default. But in any event the execution petition cannot be dismissed as abated. Alternatively, it is also open to the decree-holder's legal representatives, to file a fresh execution petition in case of death of the decree-holder; or, in case of death of the judgment-debtor, the decree-holder can file a fresh execution petition impleading the legal representatives of the judgment-debtor; such a fresh execution petition, if filed, is, in law, only a continuation of the pending execution petition - the one which was filed in time by the decree-holder initially. This is the position under the Code of Civil Procedure.”

5. The ratio laid down by the Hon'ble Apex Court in the above referred judgment squarely applies to the facts and circumstances of the present case.

6. The Execution Court has rightly allowed the application. I do not find any error or irregularity in the order passed by the Execution Court. The Civil Revision Petition is liable to be dismissed. Accordingly, the same is dismissed.

7. The learned counsel for the respondents/decreed holders submitted that the Execution Court may be directed to dispose of the Execution Petition in E.P.No.59 of 2011, within a time frame. The learned counsel for the petitioners/judgment debtors has no objection for giving such direction.

8. In view of the submissions made by the learned counsel on either side, I direct the District Munsif, Tiruvarur to dispose of the Execution Petition in E.P.No.59 of 2011, on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

Index : Yes / No
Internet : Yes
Speaking order / Non Speaking Order

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16.09.2019

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To

The District Munsif,
Tiruvavarur.



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C.R.P.(NPD).No.4473 of 2013

M.DURAISWAMY, J.

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