

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.09.2019

Pronounced on : 25.09.2019

Coram:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.R.P.(NPD)Nos.4542 & 4543 of 2013
and M.P.No.1 of 2013

Kullammal (died)
W/o.Marimuthu Gounder ..

Decree Holder

1.Jayalakshmi
2.Valliammai ..

Petitioners /
Proposed parties
[in both CRPs]

versus

1.Marimuthu Kounder ..

1st respondent /
Judgment Debtor
[in both CRPs]

2.The Managing Director,
Chengalrayan Co-operative Sugar Mills,
Periyasevalai,
Ulundurpet Taluk. ..

2nd respondent /
Garnishee
[in both CRPs]

PRAYER in C.R.P.[NPD]No.4542 of 2013: Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 09.10.2013 made in E.P.No.95 of 2011 in O.S.No.302 of 2007 on the file of the learned Principal District Munsif, Tirukoilur.

PRAYER in C.R.P.[NPD]No.4543 of 2013: Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal order dated 09.10.2013 made in E.A.No.312 of 2012 in E.P.No.95 of 2011 in O.S.No.302 of 2007 on the file of the learned Principal District Munsif, Tirukoilur.

For Petitioners : Mr.N.Suresh
[in both CRPs]
For Respondent No.1 : Mr.V.Lakshmi Narayanan
[in both CRPs]
For Respondent No.2 : No Appearance
[in both CRPs]

COMMON ORDER

Since the issue involved in both the Revisions are one and the same, a common order is being passed to dispose of these Revisions.

2. Aggrieved over the order dated 09.10.2013 in E.P.No.95 of 2011 in O.S.No.302 of 2007 passed by the learned Principal District Munsif, Tirukoilur, the present revision petitioners / proposed parties, who are the legal representatives of the deceased Kullammal, who was the decree holder, have filed C.R.P.[NPD]No.4542 of 2013.

3. Before the trial Court, one Kullammal, who was the wife of the first respondent / Marimuthu Kounder has filed a suit in O.S.No.302 of 2007 and seeks the relief of maintenance from the first respondent. The learned Principal District Munsif, Tirukoilur, by a judgment and decree dated 15.07.2009 has allowed the suit in favour of the said Kullammal and directed the first respondent to pay a sum of Rs.1,500/- per month, as maintenance to the deceased Kullammal. Further, the learned Principal District Munsif, calculated Rs.18,000/- as arrear maintenance on the date of decree, which was payable by the first respondent to his wife. Based on the said decree, the deceased Kullammal has filed Execution Petition in E.P.No.95 of 2011 and prayed to recover the said maintenance amount, in the said application she has claimed the maintenance for the subsequent period till filing of Execution Petition from the salary received by the first respondent, which was paid by the second respondent, who is the Garnishee / Employer of 1st respondent.

4. During the pendency of the above said Execution Petition, the decree holder, Kullammal was died and hence, her legal representatives had filed an Application in E.A.No.312 of 2012 in E.P.No.95 of 2011 and prayed to implead them, as petitioners 2 and 3 in the execution proceedings. The learned Principal District Munsif, Tirukoilur, by its order dated 09.10.2013 had

dismissed the said Application. Aggrieved over the same, the said proposed parties filed C.R.P.[NPD]No.4542 of 2013.

5. Immediately after the dismissal of the said E.A.No.312 of 2012, the Execution Petition in E.P.No.95 of 2011 has also been dismissed as infructuous. Aggrieved over the order dated 09.10.2013 passed in E.P.No.95 of 2011 in O.S.No.302 of 2007, the petitioners/proposed parties, who are the legal representatives of the deceased Kullammal, who was the decree holder have filed C.R.P.[NPD]No.4543 of 2013.

6. The learned counsel appearing on behalf of the petitioners made a submission that, since the decree for maintenance is in the nature of a claim, which is assignable and heritable, the petitioners are entitled to receive the same.

7. On the other hand, the learned counsel for the first respondent would contend that, since the amount claimed in the Execution Petition is not ascertained, the petitioners are not entitled to receive the entire maintenance till the death of their mother. In otherwise, he fairly conceded that the petitioners are entitled to receive the maintenance already calculated in the decree dated 15.07.2009 passed in O.S.No.302 of 2007.

8. I have considered the submissions made on either side and perused the materials available on record.

9. Both the learned counsel appearing for the petitioners and the learned counsel appearing for the first respondent had relied on the judgment of this Court in **DHANAPALA CHETTIAR vs. MINOR KRISHNA CHETTIAR** reported in **CDJ 1954 MHC 157** and reiterated their respective contentions, as stated above.

10. The learned counsel appearing for the first respondent particularly placed reliance in paragraph no.5 of the said judgment and made a submission that, since the compensation is not ascertained, liquidated and specified, it cannot be the subject of transfer. In this regard, it is useful to extract the relevant portion of the said paragraph, which reads as follows;

“5..... “the real difficulty which the appellant has to encounter is that even if the widow's right is one which arises in property or out of property, still since that amount is not ascertained, liquidated and specified, it cannot be the subject of transfer. For one thing it might be,

as is contended by the respondent in this case, the widow is entitled to nothing as she has remarried or she might have become disentitled to maintenance on account of her subsequent unchastity. Therefore, it is not, in all cases, that a Hindu widow can have a defined and ascertained sum claimable from her husband's estate unless by agreement between the parties a sum of money has been specifically fixed, which has to be paid out of the estate..... Such inchoate rights which have not crystallised into a definite sum cannot be the subject of transfer."

11. On the other hand, the learned counsel appearing for the petitioners has relied on the following passage in support of their case.

"6.....The position therefore is that on the date of the preliminary decree, the third defendant had become entitled to certain amount as arrears and was also declared entitled to maintenance subsequent to the preliminary decree for all of which provision has to be made in the final decree."

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12. Applying the principle laid down in the present set of facts, the question of transfer of future maintenance does not arise in this case. Since the wife of the first respondent was died during the pendency of the

execution proceedings, only in the capacity as legal representatives of the deceased Kullammal, the revision petitioners had approached the Courts below for the reliefs, as stated above. In fact, the Execution Petition in E.P.No.95 of 2011 was filed earlier by the deceased Kullammal for recovering Rs.86,765/-, in which, she has specifically stated that the balance maintenance as per E.P.No.105 of 2010 was Rs.71,760/- and for the period from 01.07.2010 to 29.04.2011 was Rs.15,000/- and only in the said sense, the deceased Kullammal has filed the said Execution Petition.

13. Now as per the decree dated 15.07.2009 passed by the learned Principal District Munsif, upto the date of decree, the deceased Kullammal was entitled to Rs.18,000/-. But the said Kullammal filed the Execution Petition in E.P.No.95 of 2011 only in the year of April 2011. Only after calculating the total maintenance till 2011 as above, the Execution Petition in E.P.No.95 of 2011 was filed by the deceased Kullammal. The said amount is the personal property of deceased Kullammal and the same can be transferred according to the Transfer of Property Act. Since the petitioners herein are the legal representatives of the deceased Kullammal, they are entitled to the above referred arrear maintenance amount immediately after the death of their mother. In otherwise, the judgment relied on by the learned

counsel appearing for the petitioners as well as the learned counsel appearing for the first respondent is not in respect to the execution proceedings whereas the same relates to determine the right of the parties. So, the factual aspects found in the present petitions are entirely different.

14. The learned Principal District Munsif, Tirukoilur, without considering these aspects, simply by mentioning the reason that the decree holder was no more, hence the Execution Petition filed by the petitioners has become infructuous, which is erroneous in law. The order passed by the learned Principal District Munsif, is having material irregularity. Therefore, I am of the opinion that the petitioners are necessarily to be impleaded, as petitioners 2 and 3 in E.A.No.312 of 2012 and they are entitled to proceed with the Execution Petition filed by their mother in E.P.No.95 of 2011, further they are entitled to recover the total maintenance amount by attaching the salary received by the first respondent from the second respondent / Garnishee.

15. For the foregoing reasons, these Civil Revision Petitions are disposed of. The orders dated 09.10.2013 made in E.P.No.95 of 2011 in O.S.No.302 of 2007 and E.A.No.312 of 2012 in E.P.No.95 of 2011 in O.S.No.302 of 2007 passed by the learned Principal District Munsif, Tirukoilur, are hereby

set aside. The learned Principal District Munsif, Tirukoilur, after restoring the Execution Petition on file, is directed to implead the petitioners, as petitioners 2 and 3 and proceed with the Execution Petition in accordance with law. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

25.09.2019

Speaking Order/Non Speaking Order

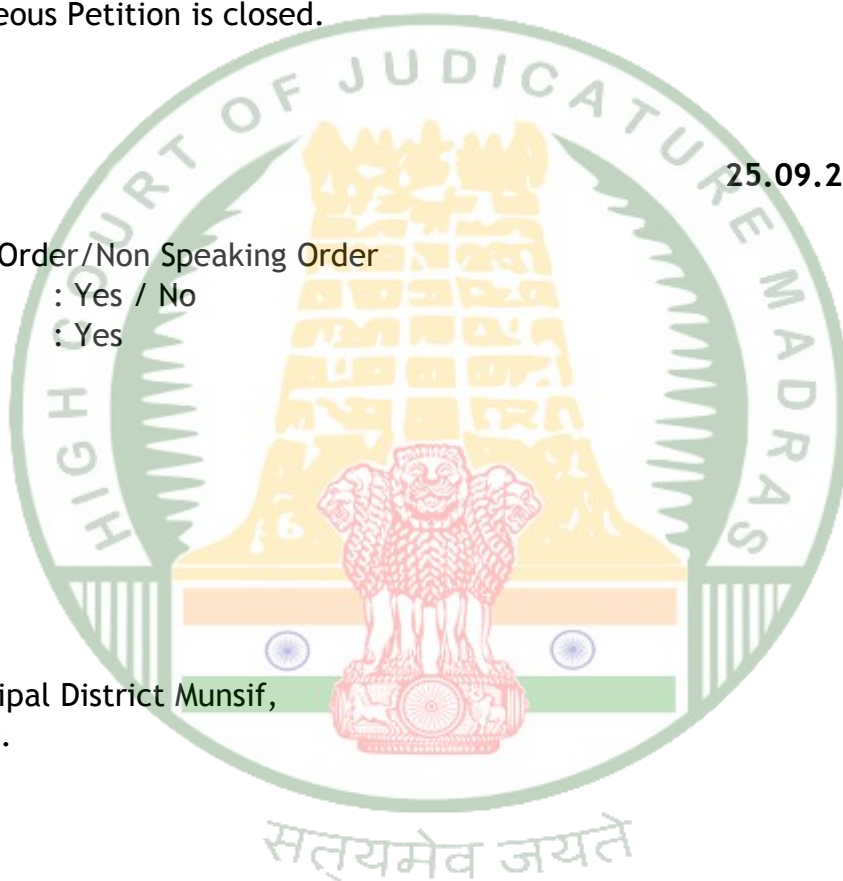
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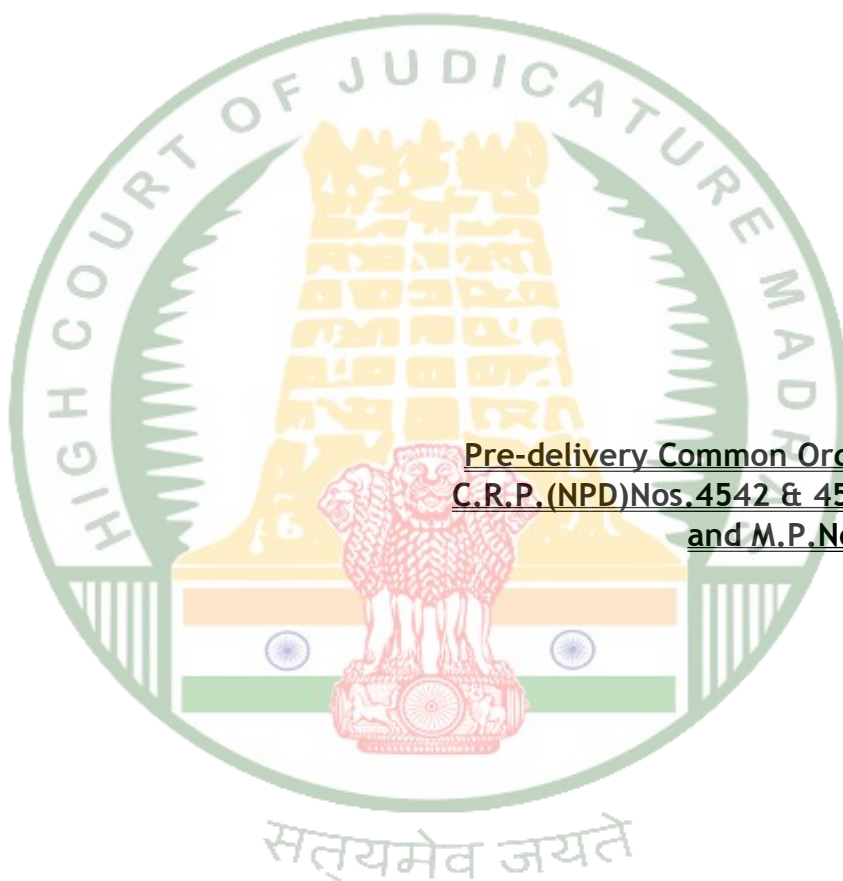
The Principal District Munsif,
Tirukoilur.



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R.PONGIAPPAN, J.,

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Pre-delivery Common Order made in
C.R.P.(NPD)Nos.4542 & 4543 of 2013
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