

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.03.2019

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

CRP.(NPD).No.2570 of 2014
and
M.P.No.1 of 2014

1.S.Balashanmugam

2.Gnanalakshmi

... Petitioners

Vs.

1.R.Dasarathan

2.Renukadevi

3.Velusamy

4.Balasundaram

5.R.Arulmozhi Angayarkanni

6.R.Adalarasu

7.R.Dharani

... Respondents

PRAYER: Civil Revision petition is filed under Article 227 of Constitution of India, against the R.E.P.No.84 of 2008 in O.S.No.344 of 2000 pending on the file of the Hon'ble Sub-Court, Tiruchengode, transmitted from the Hon'ble Sub-Court, Srivilliputhur.

For Petitioner

: Mr.Kumar & Baskar

For Respondents : R1 to R3 - No appearance
R4 to R7 - Given up

ORDER

The petitioners are aggrieved by pendency of R.E.P.No.84 of 2008 in O.S.No.344 of 2000 on the file of the Subordinate Court, Tiruchengode which was transmitted from the Subordinate Court, Srivilliputhur.

2. R4 to R7 were given up. Paper publication was ordered on notice to R1 to R3 on 13.07.2018. Though the name of these respondents have been printed in the cause list. There is no representation on their behalf today. Hence, the case is taken up in their absence is decided on merits.

3.The petitioners are two of the legal representatives of the deceased judgment debtor Balasubramaniam in O.S.No.344 of 2000. The above suit was filed by the father of the respondents 1 to 3. They were brought on record after his death during the pendency of the suit. The suit was decreed on 18.10.2004 by the Sub-Court, Srivilliputhur.

4.The Revision petitioners are the brother and sister of the

judgment debtor Balasubramaniam who died on 30.05.2008 after the suit was decreed before the initiation of the execution proceedings.

5. Respondents 1 to 3 who are the legal representatives of the decree holders initiated execution proceedings to enforce the judgment and decree by making petitioners herein as legal representatives of judgment debtor Balasubramaniam.

6. It is submitted that the impleading of the petitioners in the E.P was contrary to Section 50 of CPC., as it was done without notice to them.

7. The learned counsel for Revision Petitioners drew the attention to the decisions of the Orissa High Court in **Sudhamani Dei Vs Sadananda Mohanty, reported in CDJ 1979 Orissa HC 012**, which relied on the decision of the Hon'ble Supreme Court in **Pannalal Vs. Mt. Naraini, AIR 1952 SC 170**. The Hon'ble Supreme Court has held as follows:

"It is now settled by judicial decisions that there is no difference as between son, grandson and great grandson so far as the obligation to pay the debts of the ancestor is concerned; but none of them has any personal liability in the matter irrespective of receiving any assets, The

position, therefore, is that the son is not personally liable for the debt of his father even if the debt was not incurred for an immoral purpose and the obligation is limited to the assets received by him in his share of the joint family property or to his interest in such property and it does not attach to his self-acquisitions..."

Even if the widow be a legal representative, in terms of the definition under Section 2(11) of the Code and under Section 50, she could be substituted in place of the deceased husband as a legal representative, in view of the special provisions in Section 53 of the Code ' she would not be liable. This section expressly confines the liability to the property in the hands of a son or other descendant. Where joint family property passes by survivorship from one member of a joint family to another, the property is that of the latter, but the section regards it as the property of the deceased in the circumstances mentioned therein and confines the liability in the hands of the son or other descendant. The legal position seems to be uniform that the widow is not a descendant and she gets her right in the husband's property as a statutory heir. (AIR 1966 Bom 169: Rangubai v. Laxman Lalji Patil, and AIR 1977 Pat 185: Keshav Nandan Sahay V. The Bank of Bihar). If the widow would not come within the ambit of the phrase 'other descendant', she would not have liability under Section 53 of the Code. It is unnecessary to refer to many authorities cited at the Bar as most of them have no direct bearing on the point. On the analysis presented above, it should be held that the widow's share in the husband's property received by her under the provision of the Hindu Succession Act would not be available for execution of the decree against the deceased husband and her share, therefore, is immune."

8.The learned counsel for the petitioners further relied on the

following decisions of the Honourable Supreme Court.

i. In **N.K.Mohammed Sulaiman vs N.C.Mohammed Ismail & Others** CDJ 1965 SC 027.

ii. In **Harihar Prasad Singh and Others vs Balmiki Prasad Singh and Others** CDJ 1974 SC 037.

9.I have considered the submission of the learned counsel for the petitioners. The E.P is opposed on the ground that though there are other legal representatives of the deceased judgment debtor Balasubramaniam, they have not been made parties. Secondly, it was submitted that they have not inherited any property from the judgment debtor Balasubramaniam and they cannot be directly made party in the E.P without being heard and without the leave of the Court.

(a).Section 50 of CPC reads under:-

“(1) Where a judgment-debtor dies before the decree has been fully satisfied the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to

the extent of the property of the deceased which has come to his hands and has not been duly disposed of ; and for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit."

(b).Section 2(11) of CPC defines the expression legal representatives as follows:-

11. "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;

10.In the context of Section 50 of CPC and Section 232 of Code of Civil Procedure 1882, it has been held that "legal representatives" are bound by previous proceedings in an execution against the deceased judgment debtor. A residuary legatee in possession of the judgement-debtor's estate is his legal representative even if letters of administration may not have been issued to him if it was applicable.

11.I find there is nothing in the language of Section 50 of CPC

which requires a decree holder to apply for a leave of the Court to implead legal heirs or legal representatives as respondent in E.P. When fresh proceedings are initiated. Although, leave is required to implead legal representatives in a pending proceeding when one of the parties dies. This is evident from a reading of Order 22 Rule 4 of CPC which reads under:-

4. Procedure in case of death of one of several defendants or of sole defendant

(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

⁹[(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5) Where

(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the

substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefor in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act, the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved.]

⁹[4A. Procedure where there is no legal representative

(1) If, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal representative, the Court may, on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the suit.

(2) Before making an order under this rule, the Court-

(a) may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit; and

(b) shall ascertain that the person proposed to be appointed to represent the estate of the deceased person is willing to be so appointed and has no interest adverse to that of the deceased person.]

12. In **Girijanandini Devi vs Bijendra Narain Choundhary** AIR

1967 SC 1124, the Honourable Supreme Court while considering the

question whether the decree for account can be passed against the estates, also considered the maxim "actio personalis moritur cum persona" and observed that the postulation that personal action dies with the person, has a limited application. It operates in a limited class of actions, such as actions for damages, assault or other personal injuries not causing the death of the party and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. Death of the person liable to render the account for property received by him does not therefore affect the liability of his estate. The Court thus observed as under:

"(14) Finally, it was urged that since defendants Mode Narain and Rajballav Narain had died during the pendency of the proceedings, the High Court was incompetent to pass a decree for account against their estates. Rajballav who was defendant No.6 died during the pendency of the suit for the Trial Court and Mode Narain who was defendant No.1 in the suit died during the pendency of the appeal in the High Court. But a claim for rendition of account is not a personal claim. It is not extinguished because the party who claims an account, the party who is called upon to account dies. The maxim "action personalis moritur cum persona" a personal action dies with the person, has a limited application. It operates in a limited class of actions ex delicto such as actions for damages for defamation, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. An action for account is not an action for damages ex delicto, and does not fall within the enumerated classes. Nor is it such that the relief claimed being personal could not be enjoyed after death,

or granting it would be nugatory. Death of the person liable to render an account for property received by him does not therefore affect the liability of his estate. It may be noticed that this question was not raised in the Trial Court and in the High Court. It was merely contended that because the plaintiff Bijendra Narain was receiving income of the lands of his share no decree for accounts could be made. The High Court rejected the contention that no account would be directed in favour of the plaintiff on that account. They pointed out that the mere fact that the plaintiff was in possession of some portion of properties of the joint family since 1941 cannot possibly absolve the defendants, who were in charge of their dealings with the management of the properties, from rendering accounts of the joint family estate. The plaintiff was since September 1941 severed from the joint family in estate and also in mess and residence, and he was entitled to claim an account from the defendants from September 1941, but not for past dealings. The fact that the plaintiff is in possession of some of the properties will, of course, have to be taken into account in finally adjusting the account."

13. In **Prabhakara Adiga vs Gowri And Ors** (2017) 4 SCC 97, the Honourable Supreme Court in paragraph 25 held as under:-

It is apparent from section 50 CPC that when a judgment-debtor dies before the decree has been satisfied, it can be executed against legal representatives. [Section 50](#) is not confined to a particular kind of decree. Decree for injunction can also be executed against legal representatives of the deceased judgment-debtor. The maxim "actio personalis moritur cum persona" is limited to certain class of cases as indicated by this Court in [Girijanandini Devi v. Bijendra Narain Choudhary](#) (supra) and when the right litigated upon is heritable, the decree would not normally abate and can be enforced by LRs. of decree-holder and against the judgment-debtor or his legal representatives. It would be against the public policy to

ask the decree-holder to litigate once over again against the legal representatives of the judgment-debtor when the cause and injunction survives.

14.In **N.K.Mohammed Sulaiman vs N.C.Mohammed Ismail & Others** CDJ 1965 SC 027: 1975 AIR(SC) 733: 1975 (1) SCC 212, it was held that the principle is of representation of the estate of the deceased which need not be by all the legal representatives of the deceased.

15.In **N.K.Mohammed Sulaiman vs N.C.Mohammed Ismail & Others** CDJ 1965 SC 027: 1966 AIR(SC) 792: 1966 (1) SCR 937, it was held that "the Court has therefore recognized the principle of representation of the estate by some heirs where the defendant dies during the pendency of a suit to enforce a claim-against him, and not all the heirs are brought on the record. If after bona fide enquiry, some but not all the heirs of a deceased defendant are 'brought oil the record, the heirs so brought on the record represent the entire state of the deceased, and the decision of the Court in the absence of fraud or collusion binds those who are not brought on the record as well as those who are impleaded eo nomine."

16. In view of the above decisions of the Honourable Supreme Court, I am of the view that the present Civil Revision Petition for alleged violation of Section 50 cannot be countenanced. If there are any objections to the execution of the decree against the petitioners, they can file proper counter before the Execution Court to be absolved of any liability that may be fastened or sought to be enforced against them. Consequently, the present Civil Revision Petition liable to be dismissed.

17. It is noticed that the Execution Petition is of the year 2008. Already 11 years gone by since then in view of the pendency of the present Civil Revision Petition.

18. Consequently, the Execution Court is requested to take up the E.P and dispose the same within a period of six months from the date of receipt of a copy of this order.

19. Any alienation to the estate of the deceased judgment debtor by the petitioner or other legal representatives will be subject to the outcome to the order in Execution Petition.

20.Consequently, the present Civil Revision Petition stands dismissed, while giving liberty to the petitioners to defend themselves before the execution court. Connected Miscellaneous Petition is closed.

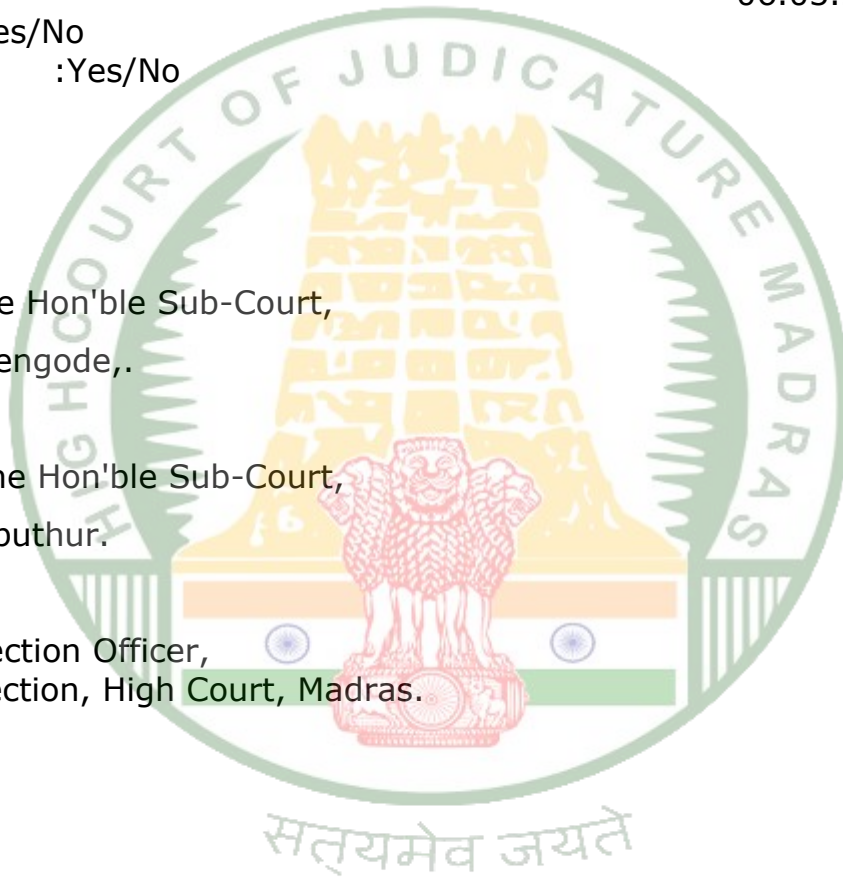
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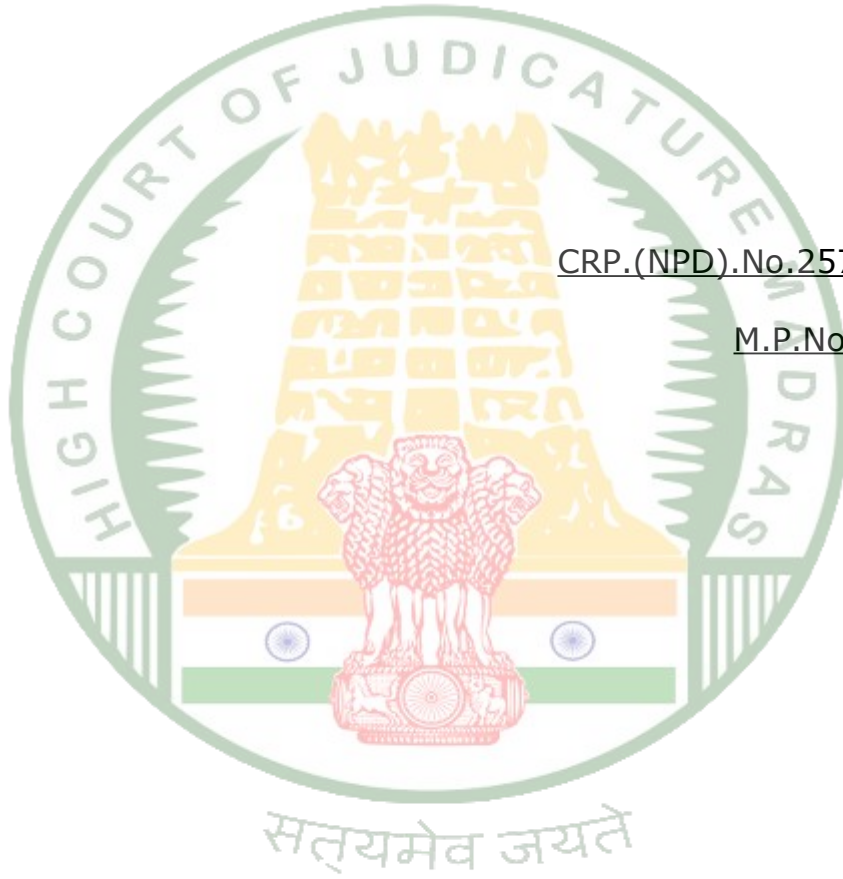
- 1.The the Hon'ble Sub-Court,
Tiruchengode,.
- 2.The the Hon'ble Sub-Court,
Srivilliputhur.
- 3.The Section Officer,
V.R.Section, High Court, Madras.



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C.SARAVANAN, J.

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