



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.08.2019

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P (PD) (MD) No.1083 of 2011

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Nagammal : Petitioner/Petitioner/Plaintiff

.. Vs ..

The Senior Divisional Personnel Officer,
Southern Railway,
Trichy. : Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, 1908, praying to set aside the order of dismissal of execution petition dated 04.02.2011 by the learned District Munsif, Tiruchirappalli, made in E.P.No.491 of 2010 in O.S.No.56 of 2001 O.S.No.56/2001 on the file of District Munsif , Thiruthuraipundi.

For Petitioner : Mr.S.Deenadhayalan
For Respondent : Mr.S.Manohar

ORDER

This Civil Revision Petition is filed by the decree-holder in the suit in O.S.No.56 of 2001 on the file of the District Munsif Court, Thiruthuraipoondi.

2.The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

2.1.The revision petitioner filed a suit in O.S.No.56 of 2001 for a declaration that she is entitled to the family pension upon the death of her husband Late Sri.Ranganathan. The suit in O.S.No.56 of 2001 was decreed *ex parte* and the defendant in the suit was directed to disburse the family pension to the revision petitioner as prayed for in the suit. Thereafter, the revision petitioner filed Execution Petition in E.P.No.491 of 2010 before the executing Court. Before the Executing Court, the judgment debtor contended that the revision petitioner is the second wife of Late Sri Ranganathan and that she is not entitled to the relief when the first wife is alive. Recording the objection, the Executing Court dismissed the execution petition.

2.2.Strangely, though the status of the revision petitioner as second wife was accepted by the Executing Court, it proceeded on the basis that the revision petitioner has not proved that she was married to the deceased Ranganathan and that there are no other children born to Sri.Ranganathan through his first wife. The



question whether the first wife is alive or not was not also raised as a ground to question the decree in O.S.No.56 of 2001 or its executability. Aggrieved by dismissal of Execution Petition, the present Civil Revision Petition is filed.

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3.This Court considered the facts and circumstances of the case and the arguments of the learned Counsel appearing on either side.

4.First of all, the status of the petitioner, as the second wife of the deceased Ranganathan, is not in dispute. The suit filed by the revision petitioner is for mandatory injunction and the same was decreed as prayed for. The decree as against the defendant in the suit has become final and no one has challenged. In such circumstances, the Executing Court cannot go beyond the decree unless the judgment debtor raise an issue with regard to the competency of the Civil Court granting decree or about the executability of the decree, in the manner as it was decreed earlier. In the absence of any issue with regard to the jurisdiction or competency of the Civil Court to pass a decree in the suit, the executability of the decree cannot be pressed into service in the execution petition. The judgment debtor have not filed any application under Section 47 of C.P.C. In such circumstances, the Executing Court has committed an error of jurisdiction by dismissing the execution petition filed under Section 21, Rule 46 read with Section 151 C.P.C.

5.The learned Counsel appearing for the revision petitioner relied upon a judgment of this Court dated 12.09.2018 in the case of S.Muthu Narayanan and others v. Paulraj Naicker [C.R.P.(NPD) (MD) No.885 of 2013] wherein this Court has considered the scope of Section 47 C.P.C. Relying upon the decision of the Hon'ble Supreme Court, this Court has observed that the Court having jurisdiction over the subject matter cannot treat the decree as nullity and ignore the same in subsequent litigation even if the suit is barred by limitation. It has been specifically observed by the Hon'ble Supreme Court in catena of cases that an error of law in a judgment can be corrected only in the manner laid down under the Code of Civil Procedure and that the party to the litigation cannot challenge the decree on the ground that the judgment is a nullity, in the subsequent proceedings.

6.As a result, this Civil Revision Petition is allowed and the matter is remitted back to the executing Court for passing appropriate orders on merits and in accordance with law. Such exercise shall be undertaken by the learned First Additional District Munsif Court, Tiruchirappalli, within a period of eight weeks from the date of receipt of a copy of the order. The Registry is directed to send the records as expeditiously as possible preferably within a period of two weeks from the date when



copy of this order is made ready. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

SRM

To

1.The I Additional District Munsif,
Tiruchirappalli.

2.The District Munsif,
Thiruthuraipoondi, Tiruvar District

3.The Principal District Munsif,
Tiruchirappalli.

+1 CC to M/s.S. MANOHAR, Advocate (SR-82974[F] dated 22/08/2019)

Copy to:- The Section Officer

V.R.Section

Madurai Bench of Madras High Court,

Madurai.

[Direction to send the Records Immediately]

C.R.P (PD) (MD) No.1083 of 2011

21.08.2019

AP (29.07.2020) 3P-7C