



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2019

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (MD) No.1857 of 2013

and

M.P. (MD) No.1 of 2013

1.Gnanaguru

2.T.Venkatesh Babu

3.T.Pushpalatha

4.T.Uma Maheswari ... Petitioners/Respondents 2 to 5/
Respondents 2 to 5/Defendants 2 to 5

vs.

1.Jeyaram Raja (died) ... Respondent no.1,petitioner/Appellant/
Plaintiff

2.V.J.Mahalakshmi

3.V.J.Vijaikumar

4.V.J.Vishnusankar

5.S.V.J.Radhika

[Respondents 2 to 5 were brought
on record vide order dated 09.12.2016
and 22.12.2016 made in MP(MD)Nos.1 to 3 of 2015]

... Respondents 2 to 5

Prayer:- This Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 03.09.2013 made in I.A.No.70 of 2013 in A.S.No.8 of 2013 on the file of the Principal District Court, Virudhunagar District at Srivilliputhur.

For Petitioners : Mr.K.Vijayanand

For Respondents : Mr.K.Sureshkumar



ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned Principal District Judge, Virudhunagar District at Srivilliputhur, allowing the amendment application in I.A.No.70 of 2013 in A.S.No.8 of 2013.

2.The parties are referred to in the same array as in the suit and the facts, which are necessary for disposing the above revision petition, are as follows:

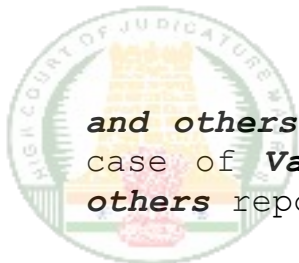
3.The first respondent/plaintiff has filed a suit O.S.No.230 of 2003 for recovery of money against one Tharmaraj Chettiar. Pending the suit, the said Tharmaraj Chettiar died and his legal heirs were brought on record and they are the revision petitioners before this Court. After perusing the entire records available on record, the learned Subordinate Judge, Srivilliputhur, was pleased to hold that the deceased first defendant/Tharmaraj Chettiar had borrowed the money and executed the promissory note. However, after impleading the legal heirs of the deceased first defendant, the prayer had not been properly amended. The suit was dismissed only on this technical ground.

4.The plaintiff on filing the appeal A.S.No.8 of 2013 on the file of the Principal District Court, Srivilliputhur, Virudhunagar, had come forward with the application in I.A.No.70 of 2013, which is the subject matter of the present revision, seeking to amend the body of the plaint and to state that the defendants 2 to 5 are liable to repay the amount only to the extent of the estate inherited by them from the deceased first defendant.

5.The said application was vehemently opposed by the defendants 2 to 5 stating that the same was barred by limitation and if the petition is allowed, it will be create a fresh cause of action.

6.The learned Principal District Judge, Virudhunagar, was pleased to allow the said application stating that the Court below has clearly held that the deceased first defendant had executed the promissory note and had borrowed the money and therefore, defendants 2 to 5 are liable to repay the said amount. I.A.No.70 of 2013 was allowed only on this technical ground, since the prayer did not state that the money could be recovered from the defendants 2 to 5. Challenging the same, the defendants 2 to 5 are before this Court.

7.The learned counsel appearing on behalf of the revision petitioners would contend that even in the written statement, the petitioners had raised a plea that the deceased first respondent had not taken any steps to amend the plea. In support of his contention, the learned counsel would rely on the judgments of the Hon'ble Supreme Court in the case of **Radhika Devi Vs. Bajrangi Singh**



and others reported in **(1996) 7 Supreme Court Cases 486** and in the case of **Vasant Balu Patil and others Vs. Mohan Hirachand Shah and others** reported in **(2016) 1 Supreme Court Cases 530**.

8. In the case cited supra reported in **(1996) 7 Supreme Court Cases 486**, the learned counsel relied upon the following observations:

Even after filing of the written statement, for 3 years no steps were taken to file the application for amendment of the plaint. Thereby the accrued right in favour of the respondents would be defeated by permitting amendment of the plaint. The High Court, therefore, was right in refusing to grant permission to amend the plaint.

9. Further, in the case reported in **(2016) 1 Supreme Court Cases 530** the learned counsel relied upon the following observations:

16. So far as the plea of limitation is concerned there can be no manner of doubt that the amendment of the plaint(s) to incorporate the relief of declaration of title has necessarily to relate back to the date of filing of the suit. Once the said amendments were allowed and were not challenged by the defendants, the issue with regard to limitation has to be decided in favour of the plaintiffs.

10. Heard the learned counsel on either side and perused the papers.

11. As rightly pointed out by the learned Principal District Judge, Virudhunagar, the trial Court has clearly found that the deceased first defendant had executed the promissory note and had borrowed the amount and therefore, the defendants 2 to 5 are bound to pay the loan amount to the extent of the estate inherited by them from the deceased first defendant and the plaintiff is not entitled to a personal decree against them. Therefore, no prejudice is going to be caused to the petitioners. Further, the judgments relied upon by the learned counsel appearing on behalf of the defendants 2 to 5 would not apply to the facts of the instant case since in the written statement, the defendants 2 to 5 have not stated that the suit should be dismissed against them as there is no relief claimed against them. They have only stated that they had not directly borrowed the amount from the plaintiff. The trial Court has observed that it was the deceased first defendant, who had borrowed the money and who had executed the promissory note as security and had failed to make the payment. Therefore, the judgments relied upon by the learned counsel appearing for the revision petitioners would not apply to the facts of the instant case.

12. In view of the foregoing discussions and considering the facts and circumstances of the case that the defendants 2 to 5 are



liable to pay the amount borrowed by the deceased first defendant to the plaintiff to the extent of the estate inherited by them, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

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Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

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To

The Principal District Judge,
Srivilliputhur.

+1 CC to M/s.R.SURIYANARAYANAN, Advocate (SR-98493[F] dated 15/11/2019)

+1 CC to M/s.K.SURESH KUMAR, Advocate (SR-98450[F] dated 15/11/2019)

C.R.P. (MD) No.1857 of 2013

DKS (CO)

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