



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.11.2019

CORAM

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

C.R.P. (MD) No.2149 of 2013

Rukmani (died)

- 1.Padmavathi
- 2.Thiruvani
- 3.R.Sutha Vasudevan
- 4.R.Vaidegi Kalyanasundaram
- 5.R.Venkada Narasimman
- 6.R.Vembu Rameshkumar
- 7.R.Sathya Baskar

... Petitioners

Vs.

- 1.Balakrishnan
- 2.Logumani
- 3.Mayandi
- Velmurugan(died)
- 4.Vanitha
- 5.Minor Parthiban
- 6.Minor Padmarani

(Respondents 5 to 6 are minors represented by their mother and guardian 4th respondent)

... Respondents

RAYER:- Civil Revision Petition filed under Section 115 of C.P.C., to set aside the fair order and decreetal order dated 27.06.2013 in E.A.No.15 of 2009 in E.P.No.52 of 2006 in O.S.No.31 of 1996, on the file of the District Munsif Court cum Judicial Magistrate Court, Andipatti by allowing this Civil Revision Petition.

For Petitioners : Mr.B.Rajesh Saravanan

For Respondents : No Appearance

ORDER

This revision is filed challenging the order passed by the learned District Munsif cum Judicial Magistrate, Andipatti in E.A.No.15 of 2009 in E.P.No.52 of 2006 in O.S.No.31 of 1996. The legal heirs of the first decree holder are the revision petitioners before this Court.

2.The brief facts, which are necessary to dispose of the revision are as follows:

2(i).The deceased first decree holder along with the second and third petitioners have filed execution proceedings against the defendants. Pending execution proceedings, the first decree holder died on 25.08.2007. An application to bring on record her legal heirs was filed in the month of November 2008. The said application was opposed by the judgment debtors stating that the application is filed belatedly and therefore, it could not be allowed. The learned District Munsif Court, Andipatti by the impugned order has dismissed the said application on the ground that the petition has been moved two years after the death of the first decree holder and the



petition has not been moved within the prescribed time. The learned Judge also found that the petitioners have not produced any document to prove that they are the legal heirs of the deceased first decree holder. Challenging the said order, the revision petitioners are before this Court.

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3. Though the notice had been served on the respondents, they have neither entered appearance through counsel nor in person, when the matter was called. Hence, this Court is proceeded to hear the matter in their absence.

4. The learned counsel appearing for the petitioners submitted that the provisions of Order 22 Rule (12) of the Code of Civil Procedure make it clear that provisions in Order 22 Rule 3, 4 & 8 would not apply in the case of execution proceedings and that the Court below had lost sight in considering all these provisions of law. In support of his arguments he would submit judgments reported in **AIR 1932 (MAD) 73** and **AIR 1990 Delhi 217**.

5. A reading of the Order 22 Rule 12 C.P.C, it is clear that the provisions does not apply to the execution proceedings. Further, the respondents have not filed any counter denying that the proposed petitioners are not the legal heirs of the deceased first decree holder. In the absence of such denial, there is no necessity not to allow the petitioners to let in evidence.

6. Taking into consideration of the above factors and law in this regard, the order of the learned District Munsif cum Judicial Magistrate Court, Andipatti is perverse and deserves interference. Accordingly, this civil revision petition is allowed by setting aside the order passed in E.A.No.15 of 2009 in E.P.No.52 of 2006 in O.S.No.31 of 1996 on the file of the learned District Munsif cum Judicial Magistrate, Andipatti. Considering the fact that the execution proceedings is of the year 2006, the learned Judge is directed to dispose of the execution proceedings, within a period of two months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

gns

To

The District Munsif cum Judicial Magistrate, Andipatti.

+1CC to M/s.B. RAJESH SARAIVANAN, Advocate (SR-101303[F]