



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.02.2019
CORAM

THE HONOURABLE MRS. JUSTICE.S.RAMATHILAGAM

WEB COPY

C.R.P. (NPD) (MD)No.363 of 2019

G.Palanivelammal (Died)

...Plaintiff/Decree Holder

1.S.P.Ganapathi

2.G.Thangaraj

3.G.Ravi

4.G.Malaikozunthu

5.G.Swaminathan

... Petitioners 1 to 5/
Proposed Petitioners 1 to 5

Vs.

V.Kannan

... Respondent

PRAYER Civil Revision Petition filed under Article 227 of the Constitution of India to direct the subordinate Court, Sivagangai to take the delivery execution petition in E.P.No.C.R.19ANo.3778/2017 in O.S.No.8 of 2004 to its file, number the same and to proceed further in accordance with law by allowing this Civil Revision Petition

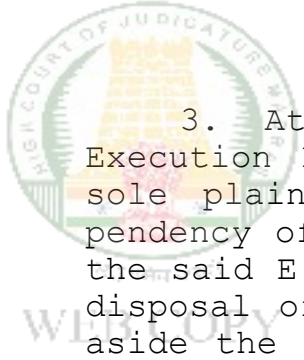
For Petitioner

: Mr.M.Ponniah

O R D E R

The petitioner herein has preferred this Civil Revision Petition seeking direction to the Subordinate Court, Sivagangai to take the unnumbered E.P.No.C.R.19ANo.3778 of 2017 in O.S.No.8 of 2004, on file and number the same.

2. The petitioner herein in the grounds has contended that the petitioners herein are the legal heirs of the sole plaintiff Palanivelu Ammal who is none other than the wife of the first petitioner and mother of petitioners 2 to 5. The fact is that the suit was filed by Palaniveluammal for the relief of declaration and for recovery of possession against the defendant and after elaborate trial, the suit was decreed on 18.03.2004 (though it is stated by the petitioner in the grounds that the decree was passed after elaborate trial, the learned counsel for the petitioner would submit that it is only an ex-parte decree). Subsequently, a petition in I.A.No.541 of 2006 was filed by the defendants to condone delay of 845 days in preferring the petition to set aside the exparte decree and the said petition was also dismissed and against the said dismissal, the defendant preferred CRP No. 296 of 2008 on 22.07.2010 and it was remanded back to the Sub-Court, Sivagangai, for fresh consideration.



3. At this juncture, the petitioners herein has filed Execution Petition by bringing petitioners as legal heirs of the sole plaintiff Palanivelummal who died on 04.12.2014 during the pendency of the case. It is contended by the petitioner herein that the said E.P was returned by the Court on 08.10.2018 recording the disposal of I.A.No.540 of 2006 I.e filed by the defendants to set aside the ex-parte petition. In the compliance, the petitioner has stated that they have represented the said E.P., mentioning the pendency of I.A.No. 541 of 2006. The petitioner herein represented the same by giving proper reply regarding the pendency of I.A.No. 541 of 2006 with another return in O.S.No. 8 of 2004. The plaintiff died only after decree and hence the petitioners are brought on record as legal heirs and Executing Court require the fact that whether the legal heirs are only the legal heirs of original plaintiff Palanivelummal who died subsequently to the decree, is to be analyzed.

4. The petitioner herein has not complied with the return regarding the details required by the Executing Court about the pendency of I.A.No.541 of 2006 and another return. When the original Plaintiff (Palanivelu ammal) died after decree which needs clarity whether the petitioners are only the legal heirs of the deceased Palanivelu ammal, whereas the petitioner without complying the same by way of representing, has directly preferred this Civil Revision Petition. In spite of complying with the return made by Executing Court, he does not represent the matter and he has preferred this Civil Revision Petition. The remedy is very much available to the Petitioner before the concerned court, which has returned the execution Petition. The petitioner has bye-passed the procedure and approached this Court directly without complying with the return made by the Court below and proceed with the case in the said Court. The reason given by the Petitioner in this Civil Revision Petition is not sustainable and hence, the Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

/TRUE COPY/

Sub Assistant Registrar

To:

Registry is directed to return the Original execution Petition.

The Subordinate Court, Sivagangai.

COPY TO:

THE SECTION OFFICER,

VR SECTION,

MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

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