



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.07.2019

PRONOUNCED ON : 28.08.2019

CORAM

**THE HONOURABLE MRS. JUSTICE J. NISHA BANU**

C.R.P. (MD) No. 1036 of 2019 (NPD)

and

C.M.P. (MD) No. 5726 of 2019

WEB COPY

1. M. Basir Ahamed,  
M/s. Wazith Engineering & Trading Private Ltd.,  
rep. by its Managing Director,  
Periyapalli Vasal Street,  
Uthamapalayam,  
Theni District.

2. M. Basir Ahamed

3. M. Humaiyumkibir

4. Dr. Samuel Abraham .. Petitioners /  
Respondents / Defendants

Vs.

Dr. Nammalvar (died) ... Plaintiff

1. Santha Nammalvar

2. Rajkumanan

3. Laura Dimpanan Nelson .. Respondents /  
Petitioners / L.Rs of Plaintiff

((2<sup>nd</sup> and 3<sup>rd</sup> respondents are represented through  
the Power Agent ie., Santha Nammalvar)

**PRAYER:** Petition filed under Section 115 of C.P.C., against  
the fair and decreetal order, dated 15.04.2019, passed in E.P.No.  
114 of 2018 in O.S.No.5 of 2009 by the Additional District Judge  
(FTC), Theni.

For Petitioners : Mr. K. Chockalingam

For respondents : Mr. H. Arumugam

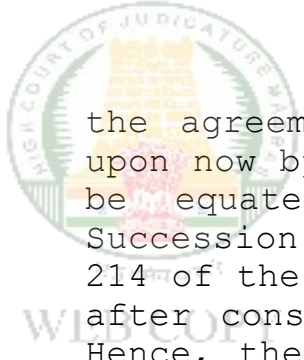
**ORDER**

This Civil Revision Petition has been filed by the revision petitioners/ defendants, as against the order, dated 15.04.2019, passed in E.P.No.114 of 2018 in O.S.No.5 of 2009, whereby and whereunder the Court below allowed the execution petition filed by the respondents, thereby ordered for attachment.

2. The original plaintiff by name V.Nammalvar had filed the suit in O.S.No.5 of 2009 for specific performance and permanent injunction, and in the alternative, refund of the advance amount of Rs.45,00,000/- with interest at 24% p.a. from the date of receipt of amount till the date of realisation. After considering the oral and documentary evidence adduced on either side, the trial Court has allowed the suit in respect of the alternative relief, thereby directed the petitioners 1 to 3 /defendants 1 to 3 to repay the advance amount of Rs.45 lakhs with interest at the rate of 12% p.a. from the date of receipt of amount till the date of realization. The trial Court dismissed the suit in respect of the 4<sup>th</sup> petitioner/4<sup>th</sup> defendant. Subsequent to the decree, the original plaintiff died. An agreement was entered into between the petitioners 1 and 2 herein and the respondents 1 and 2 herein in respect of payment of decree amount. As per the agreement, the respondents 1 and 2 have agreed to receive Rs.1,17,37,744/- in two installments by producing Succession Certificate, as the 3<sup>rd</sup> respondent herein was born through the second wife of the deceased plaintiff and she is settled in foreign country. As the petitioners have been dragging on the matter, without any payment only insisting on the Succession Certificate, the respondents herein have filed execution petition in E.P.No.114 of 2018. The agreement was not produced on either side before the Court below. The Court below, after hearing both sides, ordered for attachment of property. Challenging the same, the petitioners have filed this revision petition.

3. The learned counsel for the petitioners submitted that since the respondents 1 and 2 did not produce the Succession Certificate, the petitioners could not pay the installment as per the agreement. He would further submit that the Succession Certificate is mandatory under Section 214 of the Indian Succession Act in respect of a decree passed over the pre-existing debt due to the deceased. Without furnishing the Succession Certificate, the respondents could not maintain the execution petition itself. The Court below, without considering the above aspect, has erroneously passed attachment order. Thus, he prayed to set aside the order passed by the Court below.

4. The learned counsel appearing for the respondents submitted that the 3<sup>rd</sup> respondent has not entered into an agreement with the petitioners and the respondents 1 and 2 is not a valid one. He would further submit that the petitioners herein also did not mark



the agreement on their side and therefore, it cannot be relied upon now by the petitioners. The recovery of advance amount cannot be equated with debt or pre-existing debt. Therefore, the Succession Certificate is not necessary as mandated under Section 214 of the Indian Succession Act., in this case. The Court below, after considering the above, has rightly ordered for attachment. Hence, the same need not be interfered with. Thus, he prayed to dismiss this revision petition.

5. Heard the learned counsel appearing for both sides and perused the materials available on record.

6. Admittedly, the agreement stated to be entered between the petitioners and the respondents 1 and 2 have not been produced and marked before the Court below by both the parties. More over, it is seen that the petitioners did not take any steps to deposit the decretal amount, in order to show their *bona fide*. The time fixed for repayment in the agreement have already been lapsed. Therefore, the argument with regard to agreement cannot be taken into account.

7. As per Section 214 (1) (a) & (b) of the Indian Succession Act, a Succession Certificate is necessary only if a decree had been sought for on a pre-existing debt due to the deceased. In this case, the original plaintiff filed the suit for specific performance and in the alternative, sought for recovery of advance amount with interest. The advance amount cannot be termed as debt. As the decree is for repayment of advance amount which was paid for an agreement, it cannot be stated to be a pre-existing debt. Therefore, as rightly held by the Court below, the Succession Certificate is not necessary for filing the execution petition. More over, there is no rival dispute between the legal heirs of the original plaintiff. The intention of the petitioners seems to be dragging on the matter one way or the other. The Court below has rightly ordered for attachment. This Court does not find any reason to interfere with the order passed by the Court below.

8. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (w)

// True Copy //

Sub Assistant Registrar (CS)



To  
The Additional District Judge,  
Theni.

+1 CC to M/s.K.CHOCKALINGAM, Advocate ( SR-84261[F] dated  
29/08/2019 )

+1 CC to M/s.H.ARUMUGAM, Advocate ( SR-84424[F] dated 30/08/2019 )

gcg

order made in  
C.R.P.(MD)No.1036 of 2019 (PD)  
28.08.2019

KM/(10.09.2019) 4P 4C