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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.06.2021
Pronounced on : 06.07.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.R.P.No.232 of 2021
and
C.M.P.Nos.2179 of 2021

B.S.Selvakumar

...4th Respondent/Judgment Debtor No.4/
Revision Petitioner

Vs.

1.V.Subramanian

...Petitioner / Decree holder / 1st Respondent

2.Krishnan

3.L.S.P.Refined Oil Company
Rep. By Proprietor Krishnan

4.Dr.Muralidharan

...Respondents 1, 3 & 5/Judgment Debtors 1,3 & 5/

Respondents 2 to 4
(Respondents 2 & 3 are given up.)

Prayer:- This petition filed under Section 115 of CPC, to set aside the order dated 20.11.2020 in R.E.P.No.54 of 2018 in O.S.No.97 of 2003 on the file of the III Additional District Court, Salem.

For Petitioner : Mr.D.Shivakumaran
For R1 : Mr.T.S.Vijaya Raghavan
For R2 to R4 : No appearance

ORDER

This Revision Petition has been filed to set aside the order dated 20.11.2020 in R.E.P.No.54 of 2018 in O.S.No.97 of 2003 pending on the file of the III Additional District Court Salem.



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4.The suit was contested by the 1st and 2nd defendants. The 3rd defendant remain ex-parte. A Judgment was passed on 15.03.2005 decreeing the suit. Thereafter, the plaintiff/deGREE holder filed R.E.P.No.54 of 2018. By that time, the 2nd defendant Shanmugam had died. Therefore, his legal representatives / sons were impleaded as 4th and 5th respondents / judgment debtors. They were B.S.Selvakumar and Dr.Muralidharan, the 5th respondent/ 5th judgment debtor. B.S.Selvakumar is the revision petitioner herein.

6.A counter had been filed on behalf of the present revision petitioner, wherein, it was very specifically pointed out that under Section 50 (2) of CPC the decree holder can proceed against the legal representatives of the judgment debtor only to the extent of the property of the deceased and the Execution Petition seeking an order of arrest is not maintainable.

8. By the said order, the learned III Additional District Judge Salem, stated during evidence objection had not been raised and there was property left by the deceased Shanmugam in the hands of both 4th and 5th respondents/judgment debtors. Thereafter, holding that they were bound to satisfy the decree, it was further held that "it is decided to order arrest of Respondents 4 and 5 to realize the balance amount due to petitioner/decreed holder".

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"Section 50. Legal Representative:- (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court, which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit."

10. The provision of law is very clear. When a decree is executed against the legal representatives, the legal representatives shall be liable only to the extent of the property of the deceased which had come to their hands and had not been disposed of. The legal representatives cannot be arrested to satisfy the decree. The very filing of the said Execution Petition under Order XXI Rule 11 of CPC seeking to arrest the legal representatives of the judgment debtor itself is not maintainable.

11. Section 52 of CPC is also relevant. Section 52 of CPC is as follows:

"Section 52. Enforcement of decree against legal representative:-

(1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.

12. In Upadrasta Venkatalakshamma Vs. Garikipati Seshagiri Rao reported in 1931 33 LW 359, it had been held as follows:-



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".....If a suit is going on in a Court, the Court is interested in seeing that that suit is disposed of promptly both for the sake of its own business and out of fairness to other parties concerned. It is reasonable that, if a defendant dies and the right to sue survives, the plaintiff should be required under a penalty to make up his mind promptly whether he is going to continue to trouble the Court with that suit. It would be unreasonable that the suit should be left for a very long time pending on the Court's file while the plaintiff made up his mind what he was going to do about it, having already launched it. But, when we come to execution proceedings, after a decision has been given between the parties and a decree has been made, the Court is not interested in urging the decree-holder to press on with his execution. It matters nothing to the Court if the decree-holder takes the full time allowed by law for his execution proceedings or drops them altogether. There is no reason to introduce a provision that, if a decree-holder does not execute his decree promptly, the whole execution shall abate and he shall lose his decree. There would be no object in such a provision. Nor is it really necessary that there should be such a provision even in regard to any particular execution petition. If the decree-holder applies to execute the decree by arrest and the judgment-debtor dies, that matter is finished."

There is no provision in law for arrest of the legal representatives of the Judgment Debtor.

13.It is thus seen that the liability of a legal representative and limited to the assests which actually come to his hands.

14.I hold that the impugned order dated 20.11.2020 in R.E.P.No.54 of 2018 in O.S.No.97 of 2003 has to be set aside, since the learned III Additional District Judge Salem, appears to have violated the first principles of civil law, which clearly enunciate that the legal representatives of the deceased/judgment debtor can be proceeded only with respect to the assets which had fallen to their hands. An order of arrest is certainly not sustainable and the order under revision is set aside.



15. Therefore, without any hesitation, the Civil Revision Petition is allowed with costs of Rs.25,000/- payable by the 1st respondent/plaintiff/decreed holder to the petitioner/4th respondent/4th judgment debtor directly by 31.07.2021. The learned III Additional District Judge, Salem, is directed to ensure payment of the said costs before proceeding further in R.E.P.No.54 of 2018. Consequently, the connected Civil Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

smv

To

The III Additional District Court, Salem.

+1 CC to Mr.D.Shivakumaran, Advocate sr 31779

+1 Cc to Mr.T.S.Vijayaraghavan, Advocate sr 31786.

C.R.P.No.232 of 2021

GMI (CO)
SP(27/07/2021)