



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (NPD) (MD)No.427 of 2008
and M.P. (MD)No.1 of 2008

Durai (deceased)

1. Chandran
2. Sulochana
3. Sasikala

... Petitioners 2to4/
Plaintiffs/Petitioners

vs

1. Thangavel
2. Kaliyaperumal
3. Kesavan
4. R.Selvaraj (died)
5. R.Gunasekaran
6. R.Govindaraj (died)
7. S.Mohan
8. S.Kathiravan
9. S.Mathavan
- 10.Abirami

(R7 to R10 are brought on record as legal representatives of the deceased 4th respondent)

11. Saraswathi
12. G.Nandhini
13. G.Lavanya

(R11 to R13 are brought on record as legal representatives of the deceased 6th respondent)

14. Alice
15. Prasanna
16. Shantha
17. Vasantha
18. Prema

... Respondents

(R14 to R18 were impleaded vide order dated 20.01.2021)

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., against the order dated 28.04.2006 made in E.P.No.53 of 2005 in O.S.No.1013 of 1982 on the file of the District Munsif Court, Thanjavur.

For Petitioner : Mr.N.Sivakumar

For Respondents : Mr.H.Lakshmi Shankar for R5, R7 to R13



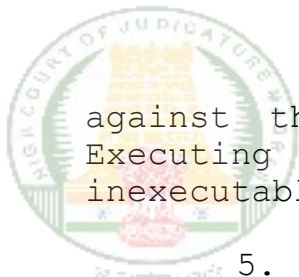
ORDER

This Civil Revision Petition is directed against the order dismissing an Execution Petition in E.P.No.53 of 2005. The said Execution Petition was filed by the petitioners herein, seeking delivery of the property allotted to them under a final decree passed in O.S.No.1013 of 1982.

2. The said suit was laid by the first petitioner and predecessors in interest of the petitioners 2 and 3, seeking partition and separate possession of their 2/3rd share in the suit property.

3. The first defendant resisted the suit, claiming a share in the property. The respondents 5 and the predecessors in interest of respondents 7 to 13 remained ex parte in the suit. A preliminary decree came to be passed on 02.07.1990 declaring the share of the plaintiffs and the first defendant, as they are entitled to as per the sale deed. The first defendant also sought for dismissal of the suit while claiming his 1/3rd share. An application for final decree was preferred some time in the year 1991 and the final decree came to be passed on 13.01.2004. The plaintiffs sought for execution of final decree in E.P.No.53 of 2005. The defendants 1 to 3 in the suit, who were shown as respondents 1 to 3, were given up. The other defendants, namely, respondents 4 to 6 appeared through counsel. The counter affidavit was filed by the 5th respondent pointing out that the petitioner in the final decree application as well as the respondents 1 and 3 had died even during the pendency of the said application and therefore, the final decree itself is inexecutable. The Executing Court, on a consideration of the materials placed before it concluded that the final decree petition itself is abated on the death of the petitioner and respondents 1 to 3 and therefore, the final decree itself is nullity. On the said finding, it dismissed the execution petition. Aggrieved, the second plaintiff and the legal representative of the first plaintiff in the suit have come up with this Civil Revision Petition.

4. A perusal of the final decree proceedings go to show that the fact that the petitioner as well as some of the respondents in the final decree petition had died, was not brought to the notice of this Court. Once a party to the proceedings dies, the legal heirs of the deceased should be added within 90 days. On the 91st day of death, the proceedings abate automatically. Unless it is set aside in a manner known to law, no order can be passed in the application. No doubt, in similar cases, it has been held that a decree in favour of a dead person cannot be a nullity and the same can be avoided by his legal heirs. In the case on hand, it is seen from the records that some of the respondents in the final decree proceedings have also died and the legal representatives of the dead persons have not been brought on record. Therefore, the final decree passed is



against the dead persons also and the same is nullity. The Executing Court was right in concluding that the final decree is inexecutable.

5. I do not see any ground to interfere with the order of the Executing Court passed in E.P.No.53 of 2005. The Civil Revision Petition, therefore, fails. Accordingly, it is dismissed. The dismissal of this revision will not stand in the way of the petitioners taking appropriate proceedings as may be open to them under the law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

OGY

To

The District Munsif Court,
Thanjavur.

+1 CC to Mr.H.LAKSHMI SHANKAR, Advocate (SR-5514[F] dated 17/02/2021)

+1 CC to Mr.N.SIVAKUMAR, Advocate (SR-5870[F] dated 18/02/2021)

Order made in
C.R.P. (NPD) (MD) No.427 of 2008
16.02.2021

ES (CO)

SRS (12/03/2021) 3P : 4C