



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25 .06.2021
(Reserved on 16.03.2021)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (MD)No.1137 of 2019
and
CMP (MD)No.6199 of 2019

Venkadasamy ... Petitioner/Respondent/
Proposed Respondent/8th defendant

vs.

1)The Special Officer presently
The Managing Director,
The Kovilpatti Agricultural Producers
Co-operative Marketing Society Ltd., K.522,
No.962, Sattur Main Road,
Kovilpatti Town,
Tuticorin District. ... Respondent/Petitioner/
Petitioner/Plaintiff

2)V.Tamilselvi (Died) ... Respondent/fifth defendant

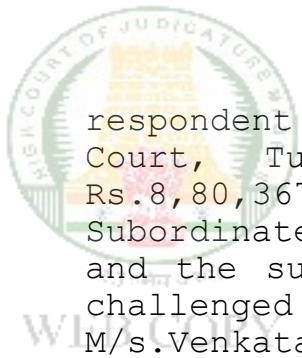
Petition filed under Section 115 of the Civil Procedure Code,
against the fair and decreetal order dated 18.03.2019 passed in
E.A.No.95 of 2016 in E.P.No.04 of 2009 in O.S.No.264 of 1998 on the
file of Subordinate Court, Kovilpatti.

For Petitioner : Mr.R.J.Karthick
For R1 : Mr.Pon Senthil Kumaran
For R2 : Died

ORDER

This revision petition has been filed against the fair and
decreetal order dated 18.03.2019 passed in E.A.No.95 of 2016 in
E.P.No.04 of 2009 in O.S.No.264 of 1998 on the file of Subordinate
Court, Kovilpatti.

2.The facts of the case are that the 1st respondent is a society
registered under the Tamilnadu Co-operative Societies Act and doing
business in cotton and cotton lint. One M/s.Venkatalakshmi
Spinners, Kovilpatti, was a partnership firm comprising of 10
partners engaging in cotton business and the said firm purchased
cotton lint from the 1st respondent on credit agreeing to pay the
money within a time frame. Since the amount was not paid, the 1st



respondent filed O.S.No.146/1996 on the file of the Subordinate Court, Tuticorin, against the said firm for recovery of Rs.8,80,367/-. The said suit was transferred to the file of the Subordinate Court, Kovilpatti and re-numbered as O.S.No.264 of 1998 and the suit was decreed on 09.10.2001. The said decree was not challenged and thus it attained finality. Thereafter, M/s.Venkatalakshmi Spinners, Kovilpatti, was closed and the 1st respondent took steps to recover the decree amount from other defendants who were partners to the said firm, but to evade compliance of decree, the defendants moved from Kovilpatti and the 1st respondent came to know that the 5th defendant/2nd respondent herein namely, Mrs.V.Tamilselvi had been working in ESI Hospital at Coimbatore and filed E.P.No.4/2009 to recover the decree amount by attaching her salary which was allowed. Subsequently, the 2nd respondent herein died on 05.02.2016 and therefore, the petitioner filed the present E.A.No.95/2016 to implead the revision petitioner herein/father of the deceased 5th defendant who is the 8th defendant in the execution proceedings to attach his properties to bring it for auction sale to satisfy the decree, which was allowed by the impugned order dated 18.03.2019, against which, this revision petition is filed.

3.The learned counsel for the revision petitioner/proposed party would state that since the limitation to file separate execution petition against the petitioner herein expired, the present petition to implead the petitioner is barred by limitation. He would further state that impleading a new party in E.P is not permissible and the provision of Order 1 Rule 10(2) CPC, is not applicable in E.P. Further, as per Section 15(1)(a) of the Hindu Succession Act, 1956, the petitioner is not the legal heir and intestate succession shall devolve firstly on the sons, daughters and husband of the deceased only and the acceptance of the decree by the deceased 5th respondent can only be fastened on her legal heirs not on the revision petitioner. Thus, he would pray for setting aside the impugned order.

4.The learned counsel for the 1st respondent would state that the deceased 5th defendant in her counter in E.P., has stated that the revision petitioner/8th defendant had taken all the properties of M/s.Venkatalakshmi Spinners, Kovilpatti, and hence, the petitioner alone is liable to pay the decree amount. He would further state that it is well settled principle that misquoting of provision will not make a party disentitled to the relief sought for and the Court below after careful analysis of entire facts and circumstances of the case particularly, the attitude of the petitioner's refusal to satisfy the decree despite sufficient means, rightly allowed the impleading petition holding that main E.P has been filed within the period of limitation. Thus, he would pray that the interference of this Court is not necessary.



5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. It is the specific contention of the deceased fifth defendant in her counter filed in the execution petition that the revision petitioner herein has taken all the properties of M/s. Venkatalakshmi Spinners, Kovilpatti and therefore, the petitioner is liable to pay the decree amount. The Court below after careful analysis of the entire facts and circumstances of the case and particularly, the attitude of the petitioner's refusal to satisfy the decree despite sufficient means, has rightly allowed the impleading petition holding that the main execution petition has been filed within the period of limitation and therefore, I am not inclined to interfere with the order dated 18.03.2019 passed in E.A.No.95 of 2016 in E.P.No.04 of 2009 in O.S.No.264 of 1998 on the file of Subordinate Court, Kovilpatti.

7. In the result, this Civil Revision Petition is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

bala/pm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Subordinate Judge,
Kovilpatti.

+1 CC to M/s.S.PON SENTHILKUMARAN, Advocate (SR-20366[F] dated 28/06/2021)

CRP(MD)No.1137 of 2019
DATED : 25 .06.2021
25.06.2021

KB(07.07.2021) 3P 3C