



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.10.2021

Delivered on : 21.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

WEB COPY

C.R.P. (MD)No.2332 of 2017

K.S.Krishnan

... Revision Petitioner /Petitioner/
Plaintiff

Vs.

1.The Director of School Education,
Chennai.

2.The Chairman,
Hindustan Aromatic Limited,
15/1, Cubbon, Bangalore-43.

3.K.Seshan ... Respondents/Respondents/Defendants

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, pleased to set aside the Fair and Decretal order dated 30.06.2017 passed in E.P.No.24 of 1999 in O.S.No.787 of 1994 on the file of the learned District Munsif Court, Tirumangalam.

For Petitioner : Mrs. Lakshmi Gopinathan
for M/s. Polax Legal Solutions

For R1 : Mr.A.Baskaran
Government Advocate

For R2 : Mr.R.Aravindan

R3 : Given up

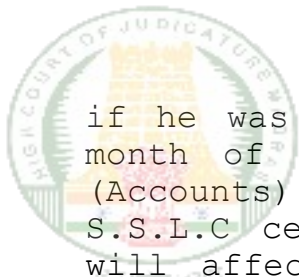
ORDER

This Civil Revision Petition is filed against the order, dated 30.06.2017 passed in E.P.No.24 of 1999 in O.S.No.787 of 1994 on the file of the District Munsif, Tirumangalam.

2. The revision petitioner herein is the plaintiff in the original suit and the petitioner in the E.P petition. The respondents herein are the defendants in the original suit and the respondents in the E.P petition.

3. Brief substance of the plaint, in O.S.No.787 of 1994, is as follows:-

The plaintiff was born on 10.12.1963 at the Government Hospital, Periyakulam. His birth was entered in Periyakulam Municipality on 21.12.1963. The birth certificate was marked as Document No.1. When the plaintiff was admitted in the School, the



if he was born on 20.05.1962. The mistake was found out in the month of January. The plaintiff is working as a Deputy Manager (Accounts) in the second respondent Company. The wrong entry in the S.S.L.C certificate and in the Service Register of the employee, will affect the duration of his employment period. He will be superannuated 1 ½ years earlier as per the age given in the S.S.L.C. Certificate and Service Register and the suit is filed for declaration that the plaintiff's date of birth is 10.12.1963 and for consequential relief of mandatory injunction, directing the defendants 1 and 2 to correct the School Certificate and in the Service Register by deleting the date 20.05.1962 and to substitute the actual date of birth 10.12.1963 in the records.

4. Brief substance of the counter filed by the first defendant in O.S.No.787 of 1994 is as follows:-

The plaintiff is said to be born at Periyakulam and employed at Bangalore. This Court has no jurisdiction to entertain the suit. Request for alteration of date of birth cannot be considered, after completing the course. The parents should have taken necessary steps to rectify the mistake at the time of signing the S.S.L.C. Book. Having kept silence all these years, the plaintiff cannot now claim alteration in the S.S.L.C. Book. The plaintiff has furnished the date of birth as 20.05.1962 with the second defendant. If the date of birth is 10.12.1963, there is no possibility for the plaintiff to have been admitted in the first standard itself.

5. An *exparte* decree was passed by the trial Court. The petitioner filed the E.P for arrest and for detention in civil prison under Order 21 Rule 32(1) of the Code of Civil Procedure. The E.P petition was dismissed. Against the same, the petitioner has filed this Civil Revision Petition.

6. Brief substance of the petition, in E.P.No.24 of 1999, is as follows:-

To punish the respondents under Order 21 Rule 32(1) of the Code of Civil Procedure, by detaining in civil prison for disobeying the decree of the Court by altering the date of birth from 20.05.1962 to 10.12.1963.

7. Brief substance of the counter filed by the first respondent, in E.P.No.24 of 1999, is as follows:-

E.P for contempt was filed against the first respondent, but, later the junior advocate of the petitioner had struck down the name of this defendant. The petitioner is not entitled to amend the E.P by adding the respondent. The original petition is only against the second respondent and not against the two other persons. Already the respondent has filed a petition, to set aside the *exparte* decree. Once the petitioner ceased to be a Student, the relationship between the respondent and the petitioner is severed.



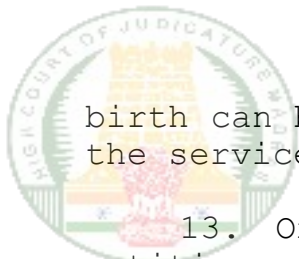
8.After considering both sides, the trial Court has dismissed the petition. Against the same, the revision petitioner has filed this Civil Revision Petition.

9.On the side of the revision petitioner, it is stated that the Execution Court, without understanding the petition in the proper prospective, has wrongly dismissed the E.P. An *exparte* decree is also a valid decree. Under Order - 21, Rule - 32 C.P.C., a decree can be executed by detention of the defendants in the civil prison or by attachment of the property or by both. The Execution Petition itself was filed in the year 1999. The respondent has failed to execute the decree. After the decree, the revision petitioner has approached the respondent in person and the trial Court did not apply the legal mind and has wrongly dismissed the execution petition and prayed the petition to be allowed.

10.On the side of the revision petitioner, it is further stated that the third respondent is the father of the revision petitioner and he is only a formal party. The petition was dismissed by the trial Court on the ground that, the defendants 1 and 2 filed a set aside petition, which is pending and the decree is a nonexecutable decree and that there is no proof for the disobedience of the decree. Section 5 of the Limitation Act petition in I.A.No.78 of 2000 was allowed by the trial Court, but, the Civil Revision Petition in C.R.P.No.1852 of 2001 was allowed against the first defendant. The decree is final. The Execution Court cannot go beyond the decree. The petitioner is about to retire in ten months and the date of birth has to be rectified.

11.On the side of the first respondent, it is stated that after joining duty in the year 1986, the petitioner has to issue notice within five years. Without issuing any such notice, the petitioner has straight away filed a suit and has obtained an *exparte* decree.

12.On the side of the second respondent, it is stated that a person, who wants to correct his date of birth, has to take steps immediately. Even after joining duty, the petitioner failed to take any steps to carry out corrections in the date of birth. Without considering the maintainability of the suit, an *exparte* decree was passed. The petitioner filed this E.P. A petition, to condone the delay in filing a petition set aside the *exparte* decree, was filed and the same was allowed by the trial Court and a Civil Revision Petition was filed by the revision petitioner. The jurisdiction of the Court was also questioned in the counter. The petitioner may not be eligible for admission in the first standard, if the date of birth is 1963, even this fact was not considered by the trial Court. Only on the basis of the school certificate and records, the petitioner joined duty under the second respondent. The second respondent is a Central Government owned public Sector Company, the head office is in other State, as per the Service Rules, date of



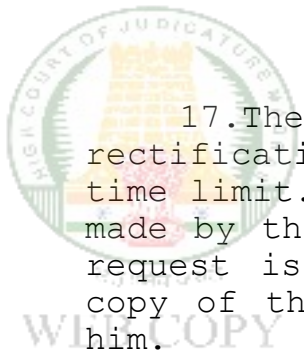
birth can be altered only within five years from the date of joining the service.

13. On the side of the respondents, it is stated that the petitioner has failed to produce the judgment of the trial Court before the E.P Court. The suit was filed at Tirumangalam not at the place of birth that is Periyakulam. The school was not made as a party to the suit. He joined service at Karnataka State. Tirumangalam Court has no jurisdiction, the decree was passed without considering the Service Rules and jurisdiction. The petitioner has not filed any E.P for execution of the decree, he has filed E.P only for arrest. The respondents 2 and 3 were deleted, as if they were formal parties, subsequently, they are impleaded for the purpose of execution. There was no transit order under Section 39(3) of the Code of Civil Procedure. Before the filing of the suit, no request was made by the petitioner, to carry out the amendment in the date of birth. Only in the year 1995, a request was made, which was barred by limitation. The date of knowledge was not mentioned in the suit. Birth certificate was obtained in the year 1988 itself. Date of knowledge was in the year 1988. The suit was not filed within three years from the date of detection of the mistake and prayed the revision to be dismissed.

14.The learned Counsel for the revision petitioner relied up on a judgment of the Hon'ble Supreme Court in **Civil Appeal No.4890 of 2014 (Arising out of Special Leave Petition (C) No.34133 of 2011) [M/s. Bharat Coking Coal Ltd and others V. Chhota Birsa Uranw]**, dated 25.03.2014, wherein, the Hon'ble Supreme Court has allowed rectification of date of birth.

15.It is seen that an *exparte* decree was passed not based on the merits. The Trial Court, while passing the *exparte* decree, has not applied its mind. It is true that the *exparte* decree is a valid decree in the eye of law, but, the decree ought to have been passed on merits. The place of birth of the revision petitioner is Periyakulam, but, instead of filing the suit at Periyakulam, the petitioner has chosen to file a suit at Tirumangalam. So, Tirumangalam Court has no jurisdiction to entertain the suit.

16. The claim of the revision petitioner is to make correction in the school records. The school, in which the petitioner completed his education was not impleaded as a party. It is seen that the petitioner entered into the service in the year 1986. He has to take steps to amend the date of birth within five years, from the date of entering into service, ie., on or before 1991. The period of limitation, for making amendment in the certificate and record, expired in the year 1991 itself. The revision petitioner has not chosen to mention the date of knowledge of the mistake. The birth certificate was obtained only in the year 1988 and not at the time of birth. The period of limitation from the date of knowledge expired in the year 1991 itself. So, the claim of the revision petitioner in the original suit itself is barred by limitation.



17.The revision petitioner has not filed any petition for rectification of the date of birth before the respondents within the time limit. It is stated that only in the year 1995, a request was made by the revision petitioner before the second respondent. The request is time barred and the Revision petitioner has not filed copy of the request or copy of the order on the request filed by him.

18.Even after obtaining an *exparte* decree, the revision petitioner has not filed any petition before the respondents 1 and 2 for execution of the decree. No E.P. with a request to execute the decree, was filed to execute the decree. The revision petitioner has filed the E.P, only for arrest for contempt and not for execution of the decree. The respondents 1 and 2 filed the set aside petition with delay. The delay excuse petition filed by the respondents were allowed by the trial Court. C.R.P.No.1852 of 2001 and C.R.P.No.2801 of 2010 were also filed by the revision petitioner were allowed, since the facts of the case was suppressed by the petitioner. It is seen that the respondents 1 and 2 failed to take immediate action against the *exparte* decree, but, this technical flaw, cannot be a ground for the revision petitioner to enjoy the benefit of his mistake.

19.The second respondent is a Central Government owned Public Sector Company. Public money cannot be wasted for a mistake on the part of the respondents. The negligence of the respondents 1 and 2 cannot affect the Public Sector Unit. The proceedings before the trial Court, in the original suit itself is an abuse of process of law and the subsequent proceedings by the revision petitioner also amounts to abuse of process of law. The *exparte* decree passed in the original suit itself is a nullity. Hence, this Civil Revision Petition is dismissed, the second respondent is directed to take steps for deduction and for recovery of any monetary benefits that arise after the date of original superannuation in accordance with law. Registry is directed to send a copy of this order to the second respondent.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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.

<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The District Munsif Court,
Tirumangalam.

2.The Director of School Education,
Chennai.

3.The Chairman,
Hindustan Aromatic Limited,
15/1, Cubbon, Bangalore-43.

4.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 CC to M/s.POLAX LEGAL SOLUTION, Advocate (SR-39873[F] dated
21/12/2021)

Pre-delivery Order made in
C.R.P(MD)No.2332 of 2017
21.12.2021

SS/20.01.2022 : 6P/7C