



C.R.P.No.159 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

C.R.P.No.159 of 2015
and M.P.No.2 of 2015

1.Pushparani

2.Sivakumar

3.Sathishkumar

4.Usha

4.Dharani

... Petitioners

Vs.

Masilamani (since died, no rank is given)

Sagunthala

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order and decreetal order dated 02.12.2014 passed in E.A.No.70 of 2012 in E.P.No.107 of 2022 in MCOP No.333 of 1992 on the file of the Motor Accident Claims Tribunal cum Sub Court, Ranipet.



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For Petitioners : Mr.Sivaprakasam

For Respondent : Sole Respondent Died

ORDER

This Civil Revision Petition has been filed against the fair and final order passed in E.A.No.70 of 2012 in E.P.No.107 of 2002 in MCOP No. 333 of 1992, dated 02.12.2014.

2.The petitioners filed the E.A. under Order XXII Rule IV(iii) of C.P.C., on the ground that the respondent obtained a decree as against the dead person and hence, the decree itself is a nullity.

3.Heard Mr.Sivaprakasam, learned counsel appearing on behalf of the petitioner.

4.The respondent filed the Execution Petition for attachment and sale of immovable properties belonging to the petitioners. MCOP No.333 of



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1992 was filed by the respondent and one Masilamani, who were claiming compensation for the demise of one Sampath in a road accident. There were five respondents in the said MCOP and the 4th respondent was one Keerthi and this respondent did not contest the case and was called absent and was set ex-parte by the Tribunal. The Tribunal on considering the facts and circumstances of the case and the evidence available on record, granted compensation of a sum of Rs.1,00,000/- (Rupees One Lakh) payable by the 4th respondent Keerthi and dismissed the claim petition insofar as the other respondents are concerned. This Award passed by the Tribunal became final. The award amount was not satisfied/paid and hence, the Execution Petition came to be filed as against the petitioners and an order of attachment was also passed by the execution Court.

5.In the above execution petition, the petitioners filed an application for the rejection of the Execution Petition on the ground that the decree has been obtained as against a dead person and hence, the decree itself is a nullity in the eye of law.



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6.The Court below took into consideration the fact that the said Keerthi remained absent even after receiving the summons and hence, was set ex-parte. The Tribunal passed the Award directing payment of compensation in the year 2010 for the MCOP filed in the year 1992. In view of the same, the Court below held that there is no question of rendering the Award passed by the Tribunal as nullity, since Keerthi did not contest the case and was set ex-parte and she died during the pendency of the petition.

7.To come to the above conclusion, the Court below relied up on the judgment of the Apex Court in ***Balvant N. Viswamitra and others vs. Yadav Sadashiv Mule and others*** reported in **2004 8 SCC 706**. In the said judgment, the Apex Court explained the distinction between a decree which is *void ab initio* and a decree which is wrong, incorrect, irregular or not in accordance with law. Insofar as the decree which is void, the same can be challenged at any stage and even in an Execution Petition or in a collateral proceedings. However, insofar as an erroneous decree is concerned, it



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cannot be challenged in an execution or in a collateral proceedings. More particularly, when the same has been passed by the competent court.

8.The Court below also took into consideration the judgment of the Apex Court in *Amba Bai and others vs. Gopal and Others* reported in **2001 5 SCC 570**.

9.Ultimately, the Court below came to a conclusion that the petitioners were third parties insofar the MCOP proceedings are concerned, since the above said Keerthi remained ex-parte and did not contest the petition and hence, the order passed in the MCOP will ultimately bind the legal heirs of the said Keerthi. The said finding rendered by the Court below does not suffer from any illegality or infirmity and it is perfectly in accordance with law. It is quite unfortunate that MCOP which was instituted in the year 1992 and where the Award was passed in the year 2010, has been hanging in balance for the last thirty years without any relief to the respondent. There are absolutely no merits in the civil revision petition.



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10.In the result, this Civil Revision Petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order
SSR

To

The Motor Accident Claims Tribunal cum Sub Court, Ranipet.

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