



C.R.P.No.1306 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2022

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.1306 of 2018

Sri Maivazhi Venkatrama Aanandar (Died)

V.Thiagarangaian

S/o.Sri Maivazhi Venkatrama Aanandar

....

Petitioner

Vs

1. A.S.Pandurangan (Died)

2. Udaishankar

3. V.M.Mohan

4. S. Meenabai

5. S.Lakshmibai

6. S.Lalitha

7. P.Padmavathi

8. K.V.Savithiri

9. Saraswathi

10. Dr.P.Sundararaj

11. A.P.Udayakumar

(Respondents 9 to 11 brought on record

as LR's of the deceased R-1 viz.,

A.S.Pandurangan vide Court order

dated 07.12.2022 made in CMP No.15677

to 15679 of 2018 in CRP No.1306 of 2018)

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Respondents



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Prayer :- Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the order dated 31.07.2017 made in E.P.No.252 of 2014 in O.S.No.313 of 2002 on the file of the II Additional Subordinate Judge, Coimbatore.

For Petitioners : Mr.P.R.Ramakrishnan
For R1 : Died. Steps taken
For R2 : M/s.Kamakshi
R3 to R9 & R11 : Not ready in notice
R10 : Mr.P.Saravana Sowmiyan

ORDER

This Civil Revision Petition has been filed to set aside the order dated 31.07.2017 made in E.P.No.252 of 2014 in O.S.No.313 of 2002 on the file of the II Additional Subordinate Judge, Coimbatore, thereby dismissing the Execution Petition.

2. Originally, the father of the petitioner filed a suit in O.S.No.313 of 2002 for recovery of money as against the first respondent (since deceased), and the second respondent herein. The said suit was decreed by a Judgment and Decree dated 07.06.2013. In pursuant to the said decree, the decree holder/petitioner filed an execution petition in E.P.No.252 of



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2014.
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3. Pending suit, the plaintiff died and his legal heirs were impleaded as party to the suit. The petitioner herein was allotted his share in respect of the debt in the suit in O.S.No.313 of 2002. However, the respondents 3 to 8 herein, being legal heirs of the deceased first respondent herein were also brought on record to give effect to the suit. Therefore, the Trial Court decreed the suit as against all the respondents herein i.e., respondents 1 to 8.

4. A perusal of the partition deed executed between the heirs of the deceased petitioner herein dated 20.12.2006, reveals that the present debt in O.S.No.313 of 2002 has to be shared between the legal heirs. Hence, the petitioner herein filed an Execution Petition as per the decree passed in O.S.No.313 of 2002. However, the petitioner restricted the execution petition only as against the deceased first respondent and the second respondent herein. The Trial Court dismissed the execution petition on the ground that the execution petition has to be filed as per the decree



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and the Execution Court cannot go beyond the decree passed by the Trial Court.

5. In this regard, the learned counsel appearing for the petitioner relied upon the Judgment reported in *(1973) 2 SCC 40* in the case of *Bhavan Vaja and others Vs. Solanki Hanuji Khodaji Mansang and another*, in which, the Hon'ble Supreme Court of India held that it is true that an Executing Court cannot go behind the decree under execution. But that does not mean that it has no duty to find out the true effect of that decree. For construing a decree it can and in appropriate cases, it ought to take into consideration the pleadings as well as the proceedings leading up to the decree.

6. In the case on hand, admittedly, the original suit was filed only as against the deceased first respondent and the second respondent herein. Pending suit, the sole plaintiff died and his legal heirs were impleaded as party to the suit. Among the legal heirs, the suit claim was allotted in favour of the petitioner herein and as such, he unnecessarily impleaded other legal



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heirs as defendants in the suit. It does not mean that the suit was decreed as against all the defendants. The suit was decreed only as against the defendants 1 and 2 in the suit. Therefore, it could be inferred that the correction, which is sought to be made in the decree before the Executing Court does not involve any substantial alteration changing nature of the suit or the nature of the suit property or its identity. Therefore, the Executing Court can very well execute the decree as prayed for by the petitioner herein.

7. Pending Civil Revision Petition, the first respondent died and his legal heirs are impleaded as respondents 9 to 11 herein. The counsel appearing for the 10th respondent submitted that even in the suit as well as in the execution petition, he is not a party and as such even before passing order in the execution petition, he must be heard.

8. Considering the facts and circumstances of the case, order dated 31.07.2017 made in E.P.No.252 of 2014 in O.S.No.313 of 2002 on the file of the II Additional Subordinate Judge, Coimbatore, is hereby set aside. The Execution Court is directed to give an opportunity to the



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respondents 9 to 11 herein and pass orders, as per the observation of this Court as stated supra, within a period of eight weeks from the date of receipt of a copy of this order.

9. In the result, this Civil Revision Petition stands allowed. No costs.

21.12.2022

Index:Yes/No
Internet:Yes/No
Speaking Order: Yes/No
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To
The II Additional Subordinate Judge,
Coimbatore.

G.K.ILANTHIRAIYAN, J.

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