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CRP.Nos.4528 to 4530 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 05.04.2022	Pronounced on: 25.04.2022
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THE HON'BLE MR. JUSTICE S.SOUNTHAR

CRP.Nos. 4528 to 4530 of 2013

CRP.No.4528 of 2013

1. K. Indirani
W/o. Late Krishnan

2. K.Manickam
W/o. Krishanan

... Petitioners

Vs.

1. K.Raja
2. Mrs. K.Annapachammal
3. K.Subramani
4. Mrs. K.Vasuki
5. K.Prabhakaran
6. Mrs.K.Krishnaveni
7. Mrs.K.Umarani

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to allow this Civil Revision Petition by setting aside the order dated 22.08.2013 made in M.P.No. 2864 of 2008 in N.T.A.No.53 of 2001 by the learned III Court of Small Causes, Chennai.



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CRP.No.4529 of 2013

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K.Manickam
S/o. Krishnan

...Petitioner

Vs.

K.Raja
S/o. Krishnan

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to allow this Civil Revision Petition by setting aside the order dated 22.08.2013 made in I.A.No.5268 of 2005 in N.T.A.No.53 of 2001 by the learned III Court of Small Causes, Chennai.

CRP.No.4530 of 2013

K.Manickam
S/o. Krishnan

...Petitioner

Vs.

K.Raja
S/o. Krishnan

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to allow this Civil Revision Petition by setting aside the order dated 22.08.2013 made in M.P.No. 160 of 2007 in N.T.A.No.53 of 2001 by the learned III Court of Small Causes, Chennai.

For Petitioner : Mr.S.Chandrabose

For Respondents : Mr.R.Ganesan [R1 in all CRPs.]

Ms.S.Shyamala [R2, R4 & R6]



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COMMON ORDER

The father of the second petitioner in CRP.No.4528 of 2013 and sole petitioner in CRP.Nos.4529 & 4530 of 2013 filed a suit in O.S.No.1247 of 1997 on the file of IX Small Causes Court, Chennai seeking a money decree directing the first respondent in CRP.No.4528 of 2013 and sole respondent in CRP.Nos.4529 & 4530 of 2013 namely Raja (his elder son) to pay a sum of Rs.5,635/- with 24% interest towards damages for use and occupation of the suit B schedule property and the same was resisted by said Raja by filing written statement.

2. The said suit was decreed directing the defendant therein to pay a sum of Rs.5,635/- together with at the rate of 12% from the date of the suit till the date of decree and 6% interest thereafter.

3. Aggrieved by the same, defendant therein viz., Raja filed an appeal in NTA.No.53 of 2001 on the file of the Chief Court of Small Causes, Madras and the same is pending.



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4. When the above appeal was pending, the second petitioner in CRP.No.4528 of 2013 and sole petitioner in CRP.Nos.4529 & 4530 of 2013 viz., Manickam (younger son of Krishnan) filed an application for impleading him as a second respondent in the appeal on the ground that his father V.M.Krishnan (sole respondent in the appeal) settled the suit property in his favour by a settlement deed dated 19.09.2001.

5. The said application was resisted by his brother above said Raja(first respondent in CRP.No.4528/2013 and sole respondent in CRP.Nos.4529 & 4530/2013) by filing a detailed counter. He questioned the validity of the settlement deed on various grounds including the right of the settlor to settle the same as he was not an exclusive owner of the subject matter of settlement deed. Further it was also claimed by the respondent that the settlement deed was not produced before the trial Court till the pronouncement of the judgment and hence, it was stemmed out of malafides. The trial Court had dismissed the said application mainly on the ground that the revision petitioner Manickam failed to produce the same before the trial Court and it established his malafide intention to



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grab the suit property. Aggrieved by the same, CRP.No.4529 of 2013 has been filed by Manickam.

6. The said Manickam also filed another petition in M.P.No.160 of 2007 before the Appellate Court, for marking certified copy of settlement deed dated 19.09.2001, certified copy of order in CMA.Nos.31 & 32 of 2004 dated 08.07.2004 and certified copy of order in I.A.No.11757 of 2000 in O.S.No.1951 of 1997 dated 04.04.2001 as a document in M.P.No.5268 of 2005. The same was also opposed by contesting respondent Raja by filing counter questioning the validity of the settlement deed . The said application was dismissed by the Appellate Court mainly on the ground that settlement deed was not brought to the knowledge of the trial Court before disposal of the suit, though it allegedly came to be executed pending suit. Aggrieved by the same, Manickam filed CRP.No.4530 of 2013.

7. The contesting respondent Raja filed an application in M.P.No.2864 of 2008 before the Appellate Court to bring on record the petitioner and respondents 2 to 7 in CRP.Nos.4528 of 2013 as legal



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representatives of his deceased father V.M.Krishnan, who was arrayed as a sole respondent in the appeal in NTA.No.53 of 2001.

8. It was their case that his father namely Krishnan passed away on 27.02.2008, when the appeal in N.T.A.No.53 of 2001 was pending and he left behind the above said persons as his legal representatives to represent his estate. The said application was resisted by petitioners in C.R.P.Nos.4528 of 2013 viz., Indirani and Manickam by filing a counter, wherein they stated that the suit property was absolute self-acquired property of deceased Krishnan and he settled the same in favour of his younger son viz., Manickam, who was arrayed as 7th respondent in the said application. Therefore, it was their case that Manickam alone was entitled to come on record as a legal representative. It was their case that, in the order dated 08.07.2004 made in CMA.Nos.31 & 32 of 2004 Manickam alone was recognised as a legal representative of deceased Krishnan and the said order was binding on contesting respondent Raja as he was a party to the same.



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9. The said application was allowed by the Appellate Court mainly on the ground that the proposed parties were legal representatives of deceased Krishnan. However, the validity of settlement deed relied on by one of the representative viz., Manickam was not considered. Aggrieved by the same, CRP.No.4528 of 2013 has been filed by said Manickam and his mother Indirani.

10. Since the issues involved in all these revisions are connected to each other, by consent of both the petitioner and respondents, all these revisions were heard together and the counsel advanced their arguments.

11. Heard the arguments of Mr.S.Chandrabose, learned counsel for the revision petitioners, Mr.R.Ganesan, learned counsel for first respondent and Ms.S.Shyamala, learned counsel for respondents 2, 4 and 6.

12. It was submitted by learned counsel for the petitioner that in the order impugned in these revisions, the learned Appellate Judge did not consider the validity of the settlement deed relied on by the revision



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petitioner. If the settlement deed relied on by the revision petitioner is held to be valid, then the revision petitioner Manickam alone can represent the estate of the deceased Krishnan and hence entitled to come on record to the exclusion of the other legal heirs of deceased Krishnan. He also referred to the order passed by the City Civil Court, Chennai in CMA.Nos. 31 & 32 of 2004 dated 08.07.2004 between him and contesting respondent Raja, wherein, leave was granted to Manickam to come on record along with his father based on the settlement deed allegedly executed by his father in favour of Manickam. Further, he also referred to the order passed by this Court in CRP.Nos.2993 & 2994 of 2008, wherein the revision petitioner Manickam alone was recognised as a legal representative of the deceased Krishnan in a connected suit between the same parties, so it is the submission of the learned counsel for the petitioner that in view of the orders passed in CRP.Nos.2993 & 2994 of 2008 and CMA.Nos.31 & 32 of 2004, the Revision Petitioner Manickam alone has to be recognised as a legal representative of the deceased Krishnan to the exclusion of other legal heirs.



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13. *Per contra*, Mr.R.Ganesan, learned counsel for respondent No.1

submitted that notice in CMA.Nos.31 & 32 of 2004 was not given to the respondents therein and hence the order passed therein would not bind them. He further submitted that the deceased father Krishnan and revision petitioner Manickam instituted a suit against first respondent Raja in O.S.No.1951 of 1997 seeking the relief of mandatory injunction directing the defendant to handover the possession of the suit property. Further, the above said persons also filed a suit in O.S.No.5440 of 2000 on the file of the XVI Additional City Civil Court, Chennai seeking recovery of money against the contesting respondent Raja and the said Raja filed O.S.No.7862 of 2010 on the file of the XVI Additional City Civil Court, Chennai against deceased Krishnan, revision petitioner Manickam and other legal heirs of Krishnan seeking a relief that settlement deed executed by Krishnan, his father, in favour of his brother Manickam dated 19.09.2001 is not binding on him and for a consequential injunction restraining Manickam and other defendants therein from interfering with his peaceful possession and enjoyment of the suit property. All these suits were tried together and disposed of by a judgment dated 25.03.2022. The suit in O.S.NO.7862 of 2010 filed by Raja was decreed declaring that



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settlement deed dated 19.09.2001 relied on by revision petitioner

Manickam was not binding on first respondent Raja. Therefore, learned counsel submitted, relying on the settlement deed, which was declared as not binding on first respondent by a Court of competent jurisdiction, the revision petitioner Manickam cannot claim that he is entitled to come on record as a sole representative of estate of the deceased to the exclusion of other legal heirs. A copy of judgment in O.S.No.7862 of 2010 dated 25.03.2022 passed by XVI Additional City Civil Court, Chennai was produced before this Court and the same was not disputed by the revision petitioner. However, the counsel for the revision petitioner submitted that he is entitled to challenge the findings found therein in a regular first appeal and therefore the findings are very much open to challenge and that the said findings have not become final. The learned counsel for the respondent also produced an order in CRP.Nos.1692 to 1694 of 2003 dated 03.12.2019, wherein according to him, all the legal heirs of Krishnan were allowed to come on record to represent his estate.



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14. Learned counsel for first respondent also relied on the following

decisions in support of his contentions:

1. *Subramaniam Vs. Perumayee & Anr. [1995 (1) CTC 479]*
2. *General Manager of IOB Vs. S.Ganesan [2018 (4) CTC 752]*
3. *Pankajbhai Rameshbhai Zalavadia Vs. Jethabhai Kalabhai Zalavadiya & Ors. [2017 SCC Online SC 1182]*
4. *Yogendra Bhagata & Ors. Vs. Pritlal Yadava & Ors. [2009(5) CTC 673]*
5. *Subramani & Ors. Vs. Ramasamy & Anr. [2007 (2) CTC 429]*
6. *K.Rudrappa Vs. Shivappa [2004 (5) CTC 365]*
7. *Vasantha Ammal & Ors. Vs. Narasimha Naidu [1999 (1) CTC 645]*

The decisions referred above were cited only for the proposition that enquiry in an application to bring legal representative on record is summary in nature and Court should not be hyper technical in considering the same and the approach of the Court should be liberal and aimed at to do complete justice between the parties and not to defeat the rights of the parties. The said proposition is taken into consideration.

15. Learned counsel for respondents 2, 4, 5 and 6 Ms.S.Shymala adopted the arguments made by Mr.R.Ganesan, learned counsel for the first respondent. She supplemented the arguments of counsel for the first



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respondent by saying that there are evidence available on record to show that the suit property was a joint family property and hence, Krishnan was not entitled to settle it, treating as if it was his exclusive property.

16. In response to the contention of the learned counsel for the respondents, the learned counsel for the revision petitioner submitted that the judgment passed in O.S.No.7862 of 2010 produced by counsel for respondents is subject to first appeal to be filed by the revision petitioner. It was submitted by him that if any appeal filed by him is allowed by setting aside the finding rendered in judgment passed in O.S.No.7826 of 2010, the eclipse created by the said judgment will be removed and in that case he is entitled to come on record to the exclusion of the other legal heirs, therefore, his interest has to be protected taking into consideration his right of first appeal.

17. I have given anxious consideration to the submission of the learned counsel appearing on either sides and perused the records.



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18. The main issue to be decided in this cases revolves around the validity of the settlement deed dated 19.09.2001 allegedly executed by Krishnan in favour of his younger son Manickam. If the settlement deed is held to be valid, Manickam is entitled to come on record as a sole legal representative of the deceased Krishnan, as far as the subject matter of the suit in O.S.No.1247 of 1997 is concerned. On the other hand, if the settlement deed is held to be invalid, all the class 1 heirs of Krishnan are entitled to come on record. It is settled law that the Court can take into consideration the subsequent events also in order to grant an appropriate relief to the parties. As on today, the settlement deed dated 19.09.2001 executed by Krishnan in favour of Manickam was held to be not binding on the first respondent Raja in O.S.No.7862 of 2010 between the same parties.

19. I have perused the judgment passed in O.S.No.7862 of 2010 wherein, there is a specific issue with regard to the binding nature of settlement deed dated 19.09.2001 (issue No.9). In paragraph 73 of the judgment, there is a specific finding that settlement deed dated 19.09.2001 executed by Krishnan in favour of Manicam is invalid and not binding



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upon the plaintiff Raja and defendants 4 to 9 therein. Therefore, there is a clear finding by a Court of competent jurisdiction that the settlement deed dated 19.09.2001 pressed into service by the revision petitioner, is not valid and not binding on contesting respondent Raja and others. However, this Court is conscious of the fact that the said finding cannot be treated as final and it cannot be treated as *res-judicata* as the same has not become final. The said finding is liable to be challenged by the revision petitioner by way of first appeal.

20. As far as the present case is concerned, the main first appeal is pending, these revisions are arising out of an orders passed in interlocutory applications filed by the parties to bring on record the legal representatives of the deceased Krishnan.

21. Admittedly, all the parties in CRP.No.4528 of 2013 are Class 1 heirs of deceased Krishnan. For the purpose of enabling the heirs to continue the appeal, all of them can be brought on record and the main issue of validity of the settlement deed can be considered at the time of final disposal of the appeal. The validity of the settlement deed has to be



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decided only in the final disposal of the appeal and not in this interlocutory stage. Merely because, all the Class I heirs of deceased Krishnan are allowed to come on record, it cannot be stated that the revision petitioner is not entitled to canvass his exclusive right under the settlement deed, at the time of final disposal of the appeal. It is always open to him to canvass that, he alone is entitled to the fruits of the decree obtained by deceased father in his capacity as settlee under the settlement deed. Leaving that right open, I am inclined to allow and confirm the order passed by the Appellate Judge in M.P.No.2864 of 2008 recording all legal representatives of deceased Krishnan. It is also made clear that in main appeal first respondent Raja is the appellant and he filed appeal against Krishnan, therefore, the right to defend the appeal that was available to deceased Krishnan would not devolve on Raja though he is a Class I heir since he is the opposite party in the appeal.

22. The learned counsel for the petitioner relied on an order passed in C.M.A.Nos.31 and 32 of 2004 on the file of the I Additional City Civil Court, Chennai and also the order passed in CRP.Nos.2993 and 2994 of 2008, in support of his contention that the revision petitioner



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alone is entitled to come on record as sole legal representative of deceased Krishnan. The order passed in CMA.Nos.31 and 32 of 2004 is not relating to a petition to bring legal representatives on record. The said order was passed in an application for impleading, when Krishnan was alive on the strength of the settlement deed in question. In the said order, the question whether the petitioner is entitled to represent the estate of Krishnan exclusively to the exclusion of other heirs did not arise at all. Therefore, the said order is not useful to support the case of the petitioner.

23. As far as the order in CRP.Nos.2933 and 2994 of 2008 is concerned the first respondent alone was party to that proceedings. The other legal representatives of deceased Krishnan were not parties to the said order. As stated earlier, I have already held that as far as the appeal pending in NTA.No.53 of 2001 is concerned, the right to defend that was available to deceased Krishnan would not devolve on the first respondent viz., Raja as he happens to be the opposite party. Hence, the order passed in the above referred CRPs will not bind the other legal representatives of Krishnan and hence the same is not useful to decide the present revision. In view of discussion above the order passed by the Appellate Judge in



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M.P.No.2864 of 2008 is confirmed and CRP.No.4528 of 2013 is dismissed.

24. In view of the fact that, the revision Petitioner Manickam is already brought on record as a legal representative of deceased Krishnan by virtue of order passed in M.P.No.2864 of 2008, no orders are necessary in M.P.No.5268 of 2005 and hence, the same is dismissed as no orders are necessary. Consequently, CRP.No.4529 of 2013 is also dismissed.

25. As far as CRP.No.4530 of 2013 is concerned, the said revision is arising out of an order dismissing the petition to mark certain documents in M.P.No.5268 of 2005. The CRP against dismissal of said M.P.No.5268 of 2005, is already dismissed on the ground that no orders are necessary. Therefore, the petition in M.P.No.160 of 2007 filed to mark certain documents in M.P.No.5268 of 2005 is also dismissed. However, it is open to the petitioner to mark those documents by way of additional evidence in the pending first appeal before Chief Court of Small Causes, Chennai, if so advised. If any such application is filed to raise additional evidence in main appeal, the same shall be decided on merits, without being influenced by anything observed in this order.



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WEB COPY 26. Therefore, all the Civil Revisions are dismissed with the above observations protecting the rights of the revision petitioner to canvass the validity of the settlement deed dated 19.09.2001 relied on by him and his entitlement to represent estate of deceased Krishnan exclusively to the exclusion of other Class I heirs of said Krishnan, in the main appeal in NTA.No.53 of 2001 pending on the file of Chief Court of Small Causes, Madras.

27. All the Civil Revision Petitions are dismissed with liberty as stated above. No costs.

25.04.2022

mp

Index: Yes

Internet : Yes



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To
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1.III Court of Small Causes,
Chennai.

2.The Section Officer,
VR Section,
Madras High Court.



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S.SOUNTHAR, J.
mp

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