



C.R.P.No.1424 of 2021
and C.M.P.No.11095 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.1424 of 2021

and

C.M.P.No.11095 of 2021

1.M.Chandrasekar

2.M.Venkatesan

3.Jayalakshmi

... Petitioners

Vs.

1.Vijayalakshmi

2.The Managing Director,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai,
Chennai - 600 005.

3.The Executive Engineer - IV,
TNSCB, T.P.Chatram,
Chennai - 600 010.

4.J.Maheswari

5.M.Balaraman

... Respondents



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Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908 to set aside the fair and decreetal orders dated 31.03.2021 passed in E.A.No.2 of 2020 in E.A.No.1 of 2020 in E.P.No.520 of 2006 in O.S.No.9612 of 1996 on the file of the Hon'ble X Assistant City Civil Court, Chennai.

For Petitioners : Mr.K.M.Vivekanandan
For R1 : Mr.S.V.S.Ilamvazhuthi
For R2 & R3 : Mr.S.Karthikeyan, Standing Counsel

ORDER

This petition has been filed to set aside the fair and decreetal orders dated 31.03.2021 passed in E.A.No.2 of 2020 in E.A.No.1 of 2020 in E.P.No.520 of 2006 in O.S.No.9612 of 1996 on the file of the Hon'ble X Assistant City Civil Court, Chennai.

2.For the sake of convenience, the parties are referred to as per their ranking in the trial Court in the original suit and in appropriate places, their rank in the present petition would also be indicated.



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3.The brief facts of the case is as follows :

- 1) The revision petitioners are the petitioners in E.A.No.2 of 2020 in E.A.No.1 of 2020 in E.P.No.520 of 2006 on the file of the X Assistant Judge, City Civil Court, Chennai. They are third parties in E.A.No.1 of 2020 in E.P.No.520 of 2006 in O.S.No.9612 of 1996.
- 2) The fourth respondent Mrs.J.Maheswari filed a suit for recovery of money due under a pronote in O.S.No.9612 of 1996 against one Govindammal (since deceased) and M.Balaraman (fifth respondent herein).
- 3) According to Mrs.J.Maheswari (plaintiff in O.S.No.9612 of 1996 and fourth respondent herein) both Govindammal (D1) and her son M.Balamurugan (D2) borrowed a sum of Rs.1,75,000/- from her on 07.03.1991 and executed a promissory note promising to repay the principal together with interest at the rate of 12% per annum on demand by the plaintiff or to her order.



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- 4) It is the further contention of the plaintiff that the first defendant Govindammal also created an equitable mortgage by deposit of title deeds of her property bearing Plot No.24, D.No.134, Venkataswamy Naidu Puram, T.P.Chatram, Chennai - 600 010 measuring 96 sq.metres morefully described in the plaint.
- 5) During the pendency of suit the death of the first defendant Govindammal was brought to the knowledge of the Court and it was recorded. Her son second defendant was already on record as D2.
- 6) Since D2 did not contest the suit, the suit was decreed *ex parte* and an *ex parte* decree was passed on 28.11.2000.
- 7) Thereafter, the decree holder (fourth respondent) filed E.P.No.520 of 2006 before the learned X Assistant Judge, City Civil Court, Chennai and brought the property of the judgment debtor for sale. The present revision petitioners filed a claim petition under Order XXI Rule 58 CPC in E.A.No.6935 of 2008. The said petition was dismissed for default with costs Rs.3,000/- to be paid to the decree holder.



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8) Subsequently, the property was sold in Court auction on 07.09.2009 in which one Mrs.Vijayalakshmi (1st respondent herein) was the successful bidder. The sale was confirmed on 12.11.2009 and a sale certificate was issued on 22.06.2010.

4.The decree holder filed E.A.No.1 of 2020 against the Managing Director and Executive Engineer, Tamil Nadu Slum Clearance Board (respondents 2 & 3 herein) directing them to furnish survey number and boundaries in respect of the property purchased by her in the Court auction sale. During the pendency of the said petition the present revision petitioners filed E.A.No.2 of 2020 in E.A.No.1 of 2020 to get themselves impleaded as parties to the proceedings on the following grounds:

- 1) The decree in O.S.No.9612 of 1996 was passed against a dead person.
- 2) After the death of their mother Govindammal all the legal heirs were not brought on record in the suit in O.S.No.9612 of 1996.
- 3) The suit in O.S.No.9612 of 1996 itself was based on a time barred



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4) The petitioners are proper and necessary parties in E.A.No.1 of 2020.

The said petition was dismissed by the learned X Assistant Judge, City Civil Court, Chennai vide his fair and decreetal orders dated 31.03.2021. Challenging the same the present Civil Revision Petition is filed.

5.Heard Mr.K.M.Vivekanandan, learned counsel appearing for the revision petitioners and Mr.S.V.S.Ilamvazhuthi, learned counsel appearing for the respondents 2 & 3.

6.At the outset it may be observed that the suit in O.S.No.9612 of 1996 was filed before the learned III Assistant Judge, City Civil Court, Chennai and the death of the first defendant was recorded by the Court before passing of the decree. In the decree in O.S.No.9612 of 1996 the first defendant is clearly shown as "dead". Therefore, it cannot be said that a decree was passed against a dead person. The suit was filed for recovery of money due under a pronote executed by late Govindammal



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and her son Balamurugan. Since Govindammal died and her son Balamurugan was already on record the same was recorded by the trial Court. The revision petitioners who claim to be the other legal heirs of the deceased Govindammal did not file any petition to get themselves impleaded as parties to the suit. Their brother (second defendant) remained absent and was set *ex parte* and an *ex parte* decree was passed on 26.12.2000.

7.The contention of the revision petitioners that the debt is time barred cannot be gone into in the execution proceedings. This is more so because the executing Court cannot go beyond the decree. In fact on an earlier occasion the very same revision petitioners filed E.A.No.6935 of 2008 under Order XXI Rule 58 CPC on the same grounds urged in the present petition. However, since they did not pursue the matter it was dismissed for default with heavy costs of Rs.3,000/- to be paid to the decree holder.



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8. Thereafter, Court auction sale was conducted and the property was sold to the first respondent herein. Sale certificate also was issued on 22.06.2010 after confirmation of sale on 12.11.2009. Thus much water has flown under the bridge. At this stage the revision petitioners want to get themselves impleaded in E.A.No.1 of 2020 filed by the Court auction purchaser against the Slum Clearance Board seeking the latter to furnish the boundaries and survey number. In the said petition, the present revision petitioners cannot be said to either proper or necessary parties to the petition because necessary party is one without whom no order can be effectively made and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings. Therefore, the executing Court was right in dismissing the petition. The petitioner in fact did not show any interest in prosecuting the case effectively and their only intention seems to be dragging on the proceedings as far as possible.



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9.Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.

mtl

To

- 1.The X Assistant City Civil Court, Chennai.
- 2.The Section Officer, VR Section, High Court, Madras.

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