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C.R.P(PD) No.2032 of 2022 and

C.M.P.No.10427 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.07.2022

CORAM

THE HONOURABLE MS. JUSTICE **R.N.MANJULA**

C.R.P (PD).No.2032 of 2022 and

C.M.P.No.10427 of 2022

Elred Kumar

... Petitioner

Vs.

S.Shanmugham (died)

1.M/s.United Commercial Bank,

Rep. by its Senior Manager,

Chennai – 600 001.

2.Annai Builders Real Estate Pvt. Ltd.,

Rep. by its Managing Director,

No.76, Medavakkam Main Road,

Madipakkam, Chennai 600 091.

3.State Bank of India,

Local Head Office and carry business at

Kariveppalankurichi Branch,

Rep. by its Manager.

4.State Bank of India,

Vridhachalam Branch,

Rep. by its Manager.



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5. United Commercial Bank,

Rep. by its Manager,

No.212, Mount Road, Chennai 600 006.

6. Allahabad Bank,

No.112, Thyagaraya Road,

T.Nagar, Chennai 600 017.

7. Dena Bank,

Rep. by its Manager,

No.1, Thanickachalam Street,

T.Nagar, Chennai 600 017.

8. State Bank of India,

Rep. by its Manager,

No.22, Arcot Street,

T.Nagar, Chennai 600 017.

9. Central Bank of India,

Rep. by its Manager,

No.803, Anna Salai,

Chennai 600 002.

10. Catholic Syrian Bank,

Rep. by its Manager,

Rani Seethai Hall,

No.603, Anna Salai,

Chennai 600 006.

11. United Commercial Bank,

Rep. by its Manager,

No.67, Burkit Road,

T.Nagar, Chennai 600 017.



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12.Mrs.Gajalakshmi

13.Mr.Palani

14.Mr.Manivannan

15.Mrs.Kalaivani

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., to set aside the order dated 03.06.2022, passed in I.A.No.99 of 2017 in A.S.No.2 of 2014, on the file of the Subordinate Court, Tambaram.

For Petitioner : Mr.T.M.Mano

ORDER

This revision petition has been filed to set aside the order dated 03.06.2022, passed in I.A.No.99 of 2017 in A.S.No.2 of 2014, on the file of the Subordinate Court, Tambaram.

2. Heard the learned counsel for the petitioner.

3. The revision petitioner is the appellant and the plaintiff in the suit.

The suit has been filed for declaration of the sale certificate dated 12.07.2006 executed by the second respondent in favour of the third respondent is null and void and for other reliefs. The said suit was dismissed and thereafter, an appeal was filed and the same is pending. During the pendency of the appeal, the



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revision petitioner filed an application to implead the legal heirs of the first respondent and the same was dismissed. Aggrieved over that, this civil revision petition has been preferred.

4. The learned counsel for the petitioner submitted that since he was not aware of the death of the first respondent who was the first defendant in the suit, he had filed an application to implead his legal heirs at the appellate stage; the learned Trial Judge without realising the necessity to implead the legal heirs of the deceased party, had chosen to dismiss the same; hence, the order should be reversed.

5. It is seen that the revision petitioner had chosen to challenge the proceedings which have been taken under SARFAESI Act and the sale certificate issued in favour of the auction purchaser during SARFAESI proceedings. Fundamentally, the filing of the suit itself is barred under Section 34 of the SARFAESI Act. It seems somehow the suit was taken on file and a judgment has also been passed. Be it as may be, the case records show that the first defendant died even when the suit was pending, but, the plaintiff did not take any steps to implead his legal heirs. The learned Trial Judge has made an



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observation that the attempt to implead the legal heirs of the deceased first respondent during the appellate proceedings, is just a delay making tactics.

6. By efflux of time, the suit filed against the first defendant would have got abated, even if it is presumed for the sake of argument that the suit is maintainable before the Civil Court. The decree if any passed in the suit in favour of the revision petitioner in the appellate proceedings would only be binding more on the other defendants than the deceased first respondent. Because the claim of the revision petitioner is that the deceased first respondent has sold the suit property in his favour prior to the SARFAESI proceedings. Neither the legal heirs of the first respondent had denied the sale in favour of the revision petitioner. Hence, even without the presence of the legal heirs of the deceased first respondent, the proceedings can be disposed effectively. Therefore, I find no reasons for interference in the order passed by the learned Trial Judge.

7. Accordingly, this civil revision petition stands dismissed and the order passed by the Subordinate Court, Tambaram, in I.A.No.99 of 2017 in A.S.No.2 of 2014, dated 03.06.2022, is confirmed. No costs. Consequently,



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connected miscellaneous petition is closed.

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Index : Yes/No

Speaking or Non-speaking order

gsk

To

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R.N.MANJULA, J.



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