



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

CRP (NPD) No.123 of 2017
and
C.M.P.No.554 of 2017

V.P.Mahesh

... Petitioner / 1st Respondent / 1st Respondent

Vs.

1.P.Krishnasamy

... 1st Respondent / Petitioner / Petitioner

2.R.Arusamy

3.Mani

... Respondents 2,3 / Respondents 1,3 / Respondents 1,3

Civil Revision Petition filed under Section 115 of CPC, to set aside the fair and final order dated 20.12.2016 passed in REA No.111 of 2013 on the file of the Sub Court, Sankari.

For Petitioner .. Mr.A.Sundaravadhanan

For Respondents .. No appearance

**ORDER**

WEB COPY Let me proceed to pass orders in the present Civil Revision Petition even though the respondents are not represented.

2.A perusal of the records shows that notice issued to the 1st respondent / petitioner in MCOP No.1065 of 2005 / petitioner in REP No.111 of 2013 could not be served, since the address could not be identified. However, the 2nd and 3rd respondents have been served on 01.03.2017, by way of Court notice and on 17.01.2017 by way of private notice.

3.The 1st respondent herein had filed MCOP No.1065 of 2005 on the file of the Motor Accident Claims Tribunal / the Additional Sub Court, Salem, for injuries sustained by him in a motor accident on 03.09.2005, when the 3rd respondent in the MCOP / 3rd respondent herein was driving the motorcycle bearing registration No.TN-28-V-0499 in a rash and negligent manner and hit the said petitioner / 1st respondent herein.

4.The Tribunal proceeded to examine the first issue with respect to the cause of accident and a very clear finding had been given that the revision petitioner / 1st respondent in the MCOP was neither a transferee



of the vehicle nor a driver of the vehicle at the time of accident and he not at all a necessary party to the claim petition. The actual words of the petitioner is extracted below:

“So far as the 1st respondent is concerned, there is no document in existence that he was a transferee or driver at the time of the accident and he was not at all a necessary party in the claim application.”

5.The Tribunal proceeded to determine the quantum of compensation to be awarded for the injuries suffered and had granted a sum of Rs.1,50,000/- together with interest of 7.5 % with the normal direction to deposit and permission to withdraw, on such deposit. This judgment was dated 21.07.2010. A decree was also passed thereafter and very specifically the decree was as follows:

“(i) that the sum of Rs.1,50,000/- is awarded as compensation with interest at 7.5% per annum from the date of the petition till the date of deposit by the 2nd respondent within one month from the date of decree”

6.The decree was passed against the 2nd respondent in MCOP. Since the 2nd respondent, R.Arusemy was having properties at Sankari, an application was filed by the 1st respondent herein under Order XXI Rule

39 of CPC seeking to transmit the decree to the Sub Court at Sankari. It



was ordered. The decree was transmitted to the Sub Court at Sankari.

Therefore, a fresh petition was filed under Order XXI Rule 11(2) and Rule 37 of CPC seeking to execute the decree. In that particular petition, the 1st respondent had stated as follows with respect to the relief prayed.

“For the realization of the amount mentioned in Column Nos.7 and 8 as above with subsequent interest and cost, the petitioner / D.Hr. prays that this Honourable Court may be pleased to issue notice under Order 21 Rule 37 of CPC., to the respondents 1 to 3 to pay the petitioner / D.Hr., the amount mentioned in Column Nos.7 & 8 supra. With subsequent interest and costs, failing which pass an order of arrest warrant under Sections 37 and 38 CPC and detain them in Civil Prison and thereby realize the decree amount, and grant such other and further reliefs as this Honourable Court may deem just and necessary in the interest of justice.”

7.It is seen that though the decree was only against the 2nd respondent, the 1st respondent had included the petitioner herein and also the 3rd respondent as persons liable to satisfy the decree. This is contrary to the decree, which had been specifically granted by the trial Court at Salem. The revision petitioner herein naturally raised grievance against this, but, that was brushed aside by the impugned order dated 20.12.2016



in REP No.111 of 2013. The Execution Petition had been taken on file by the Sub Court at Sankari in REP.No.111 of 2013.

8.The learned Sub Judge at Sankari had stated that the revision petitioner, cannot raise this ground and as a matter of fact also stated that the decree has been passed against the three judgment debtors and therefore, the Execution Court cannot go beyond the decree and that the petitioner herein has no right to call upon the Court to execute the decree against the 2nd respondent herein alone. The said order suffers from patent irregularity.

9.The judgment was passed in MCOP No.1065 of 2005 and among the reasons in the judgment it was found that the 2nd respondent in MCOP No.1065 of 2005 is alone liable to satisfy the amount awarded in favour of the petitioner in MCOP No.1065 of 2005. Thereafter, a decree was also drafted calling upon the 2nd respondent to satisfy the decree. The decree was transmitted to the Sub Court, Sankari. The 1st respondent / petitioner in MCOP No.1065 of 2005 can only execute the decree against the 2nd respondent. It is only the 2nd respondent who has been found liable to satisfy the award and to pay compensation amount to the 1st



respondent / petitioner in MCOP No.1065 of 2005. By stating that the Execution Court cannot go beyond the decree, the Execution Court had actually gone beyond the decree and had imposed liability on the 1st and 3rd respondents against whom no decree had been passed.

10.The order has to suffer a reversal and accordingly, the present Civil Revision Petition stands allowed. No order as to costs. The impugned order in REP No.111 of 2013 dated 20.12.2016 passed by the learned Sub Judge, Sankari is set aside. The 1st respondent can proceed to enforce the decree only against the 2nd respondent, R.Arusamy alone. The Execution Petition cannot be proceeded against the revision petitioner / V.P.Mahesh. Consequently, the connected Civil Miscellaneous Petition is closed.

28.02.2022

Internet:Yes/No
Index:Yes/No
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To
1.The Sub Court Sankari.



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C.V.KARTHIKEYAN,J.

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