



CRP(PD)(MD)Nos.531 of 2013 & 453 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)Nos.531 of 2013 & 453 of 2019

and

MP(MD) Nos.1 of 2013 & 2313 of 2019

CRP(PD)(MD)No.531 of 2013:-

Mathavi

... Petitioner

Vs

1.Syed Ali Fathima
2.Minor Mohammed Jaffer Sherif
3.Minor Iyasa Siriya

... Respondents

CRP(PD)(MD)No.453 of 2019:-

1.Syed Ali Fathima
2.Minor Mohammed Jaffer Sherif
3.Minor Iyasa Siriya

... Petitioners

Vs

1.Mathavi
2.Minor Rathina Bala
3.Pappammal (Died)

... Respondents

1/11



CRP(PD)(MD)Nos.531 of 2013 & 453 of 2019

Prayer CRP(PD)(MD)No.531 of 2013: Petition filed under Article 227 of the Constitution of India, to set aside the order dated 24.01.2013 passed in I.A.No.158 of 2012 in O.S.No.44 of 2011, on the file of the District Munsif Court, Kovilpatti.

Prayer CRP(PD)(MD)No.453 of 2019: Petition filed under Article 227 of the Constitution of India, to set aside the Judgment and Decree dated 18.10.2011 passed in O.S.No.180 of 2010, on the file of the Principal District Munsif Court, Thoothukudi.

For Petitioner : Mr.G.Prabhu Rajadurai
For Respondents : Mr.T.Selvam

(In CRP(PD)(MD)No.531 of 2013)

For Petitioners : Mr.T.Selvam
For Respondents : Mr.G.Prabhu Rajadurai

(In CRP(PD)(MD)No.453 of 2019)

COMMON ORDER

CRP(MD) No.531 of 2013 is filed as against the fair and decreetal order passed by the learned District Munsif, Kovilpatti in I.A.No.158 of 2012 in O.S.No.44 of 2011.



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2.CRP(MD) No.453 of 2019 is filed by the respondents in CRP (MD) No.531 of 2013, as against the judgment and decree passed by the learned Principal District Munsif Court, Tuticorin in O.S.No.180 of 2010, dated 18.10.2011.

3.Since the issues involved and the parties in both these Civil Revision Petitions are one and the same, these matters are taken up together and dispose of by this Court, by way of this common order.

4.The petitioner in CRP PD(MD) No.531 of 2013 along with her minor daughter, as plaintiffs have filed a suit in O.S.No.180 of 2010, before the Principal District Munsif Court, Tuticorin for declaration, declaring that the plaintiffs as well as the defendant are the legal heirs of one deceased Selvapandian. The plaintiffs are the wife and daughter and the defendant is the mother of the deceased Selvapandian. Pending the suit, the defendant, who is the mother of the



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deceased Selvapandian died. The petitioners in CRP (MD) No.453 of 2019 filed an interlocutory application in I.A.No.208 of 2011, under Order 1 Rule 10 and Section 151 of Civil Procedure Code, to implead them as party to the proceedings in O.S.No.180 of 2010, claiming that they are the legal heirs of the deceased Selvapandian. The said application was dismissed by the trial Court and the suit was also decreed on 18.10.2011. Thereafter, the petitioners in CRP (MD) No. 453 of 2019 have filed a separate suit in O.S.No.44 of 2011 that the decree obtained in O.S.No.180 of 2010 is by way of fraud and misrepresentation, by adding her mother-in-law alone as a defendant to the suit and also while passing the decree, her mother-in-law was no more. The petitioners in CRP(MD) No.531 of 2013 filed an application in I.A.No.158 of 2012 in O.S.No.44 of 2011, under Order VII Rule 11 of Civil Procedure Code, to reject the plaint, claiming that the subject matter is covered under O.S.No.180 of 2010 and the suit is barred by *res judicata*. However, the said application was dismissed by the trial



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Court. Aggrieved over the same, the plaintiffs in O.S.No.180 of 2010 filed CRP(MD) No.531 of 2013. The plaintiffs in O.S.No.44 of 2011 also subsequently challenged the judgment and decree passed in O.S.No.180 of 2010 by the learned Principal District Munsif Court, Tuticorin on the ground that the decree in O.S.No.180 of 2010 has been obtained as against a dead person.

5.The learned counsel appearing for the petitioners in both the Civil Revision Petitions submit since both the parties are claiming that they are the legal heirs of the deceased Selvapandian, a direction may be issued to the trial Court to consider and decide the matter afresh, after hearing both the parties.

6.This Court considered submissions made by either side counsel and also perused the materials placed on record.



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7. Admittedly, both the parties have filed the respective suits claiming that they are the legal heirs of the deceased Selvapandian. The plaintiffs in O.S.No.180 of 2010 has already obtained a decree. However, the decree obtained by the plaintiffs in O.S.No.180 of 2010 was disputed by the petitioners in CRP(MD) No. 453 of 2019, stating that it was obtained by referring her mother-in-law, namely, Pappammal alone as a defendant in that suit and also the said Pappammal died at the time of passing of the decree and therefore, the judgment and decree in O.S.No.180 of 2010 has to be set aside.

8. At this juncture, it is worthwhile to refer the decision of the Honourable Apex Court in ***Gurnam Singh(D) Thr. Lrs. & Ors Vs. Gurbachan Kaur(D) By Lrs, reported in AIR 2017 SC 2419***, wherein, it was held as follows:-

18) The law on the point is well settled. On the death of a party to the appeal, if no application is made by the party concerned to the appeal or by the legal



representatives of the deceased on whom the right to sue has devolved for substitution of their names in place of the deceased party within 90 days from the date of death of the party, such appeal abates automatically on expiry of 90 days from the date of death of the party. In other words, on 91st day, there is no appeal pending before the Court. It is “dismissed as abated”.

22) It is a fundamental principle of law laid down by this Court in Kiran Singh’s case (supra) that a decree passed by the Court, if it is a nullity, its validity can be questioned in any proceeding including in execution proceedings or even in collateral proceedings whenever such decree is sought to be enforced by the decree holder. The reason is that the defect of this nature affects the very authority of the Court in passing such decree and goes to the root of the case. This principle, in our considered opinion, squarely applies to this case because it is a settled principle of law that the decree passed by a Court for or against a dead person is a “nullity”



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9.Since the parties in both the Civil Revision Petitions are claiming that they are the legal heirs of the deceased Selvapandian and also the suit in O.S.No.180 of 2010 was decreed as against the dead person, this Court is of the view that the decree passed against the dead person is a “nullity” and it has to be set aside.

10.Accordingly, CRP(MD) No. 453 of 2019 is allowed. The judgment and decree passed in O.S.No.180 of 2010, dated 18.10.2011 as against the dead person is nullity and the same is hereby set aside. As such, the suit in O.S.No.180 of 2010 is restored to its original position and the parties in these Civil Revision Petitions shall file necessary applications to implead them as necessary parties in the suit and proceed with the suit in accordance with law.

11.In view of the order passed in CRP(MD)No.453 of 2019, CRP(MD) No.531 of 2013 is disposed of, with a liberty to the



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petitioner in CRP(MD) No.531 of 2013, to raise all her grounds in the main suit. In order to avoid multiplicity of proceedings, the suit in O.S.No.44 of 2011, pending on the file of the District Munsif Court, Kovilpatti is ordered to be transferred to the Principal District Munsif Court, Tuticorin to try along with O.S.No.180 of 2010, which is restored to file. The learned District Munsif, Kovilpatti is directed to transmit the entire records to the Principal District Munsif Court, Tuticorin forthwith. The learned Principal District Munsif, Tuticorin is directed to try both the suits simultaneously with all available materials and dispose of the same afresh, as expeditiously as possible, preferably within a period of eight months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes / No.

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To

The District Munsif Court, Kovilpatti.

The Principal District Munsif Court, Thoothukudi.



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B.PUGALENDHI, J.

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Common Order made in
CRP(PD)(MD)Nos.531 of 2013 & 453 of 2019

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