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C.R.P.Nos.1781 & 1536



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2023

CORAM

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.Nos.1781 & 1536 of 2015

and

M.P.No.1 of 2015 in C.R.P.No.1781 of 2015

and

M.P.Nos.1 and 2 of 2015 in C.R.P.No.1536 of 2015

In C.R.P.No.1781 of 2015

Mr.S.Stainslaws (died) ...Sole Appellant.

P.S.Murali ...Proposed Appellant/Petitioner.

Vs.

1.M.Lakshmi Bai

2.S.Meera Bai

3.Annadurai

4.Pachaiyappan

5.Devasena

6.Bhuvana

7.Srinivasan

...Respondents 1 & 2/Respondents 1 & 2.

[R3 & R4 brought on record as Lrs of the deceased R1, M.Lakshmi Bai vide court order dated 20.04.2022 made in C.M.P.No.19160 of 2021 in C.R.P (NPD).No.1781 of 2015 by JNBJ]

[R5 to R7 brought on record as Lrs of the deceased R2, S.Meera Bai vide court order dated 03.01.2023 made in C.M.P.No.23054 and 23055 of 2015 in C.R.P No.1781 of 2015 by GKIJ]



Prayer in C.R.P.No.1781 of 2015:Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decreetal order dated 20.08.2014 passed in C.M.A.No.52 of 2011 on the file of the IInd Additional City Civil Court, Chennai and render justice by allowing the Revision Petition.

In C.R.P.No.1536 of 2015

P.S.Murali ...Petitioner/Proposed Appellant/Petitioner.

Vs.

- 1.M.Lakshmi Bai
- 2.S.Meera Bai
- 3.Amruthavalli
- 4.Narasimha Moorthy. ...Respondents/Respondents/Respondents.

[R3 & R4 brought on record as Lrs of the deceased R1 viz., M.Lakshmi Bai vide court order dated 03.01.2023 made in C.M.P.No.19358 of 2021 in C.R.P (NPD).No.1536 of 2015 by GKIJ]

[R5 to R7 brought on record as Lrs of the deceased R2, S.Meera Bai vide court order dated 03.01.2023 made in C.M.P.No.23053 and 23057 of 2015 in C.R.P.No.1536 of 2015 by GKIJ]

Prayer in C.R.P.No.1536 of 2015:Civil Revision Petition filed under Article 227 of the Constitution Of India to set aside the fair and decreetal order dated 20.08.2014 passed in C.M.P.No.1254 of 2012 in C.M.A.No.52 of 2011 on the file of the II Addl City Civil Court, Chennai.

In both C.R.Ps.



For Petitioners : Ms.C.Jaya Chithra
: for M/s.T.S.Baskaran
For Respondents : Mr.S.Mukunth,
For R3 to R7 : Sr.Counsel and Mr.V.Babu

COMMON ORDER

The plaintiffs in O.S.No.550 of 2003 are one M.Lakshmi Bai and S.Meera Bai. The plaintiffs claim that they had executed a power of attorney in favour of one Kodandaraman. This Kodandaraman is non-else than the husband of the second defendant Pushpavalli. Kodandaraman passed away and therefore, the second defendant/Pushpavalli succeeded to the estate. Pushpavalli executed a sale deed in favour of Mr.S.Stainslaws/the first defendant.

2. Nearly a decade after the execution of the document, the plaintiffs filed a suit for declaration before the City Civil Court at Madras stating that the two documents executed by the plaintiff in favour of Kodandaraman as well as the document executed by Pushpavalli in favour of the first defendant is null and void.

3. The claim of the first defendant is that he was not served with notice in the suit. Unaware of the pendency of the suit, he sold the property in favour of



one Vasanthalaxmi. Vasanthalaxmi in turn settled the property in favour of Virudhammal. Virudhammal sold the property in favour of Murali (the civil revision petitioner).

4. Prior to the alienation made by Vasanthalaxmi in favour of Virudhammal and from Virudhammal in favour of Murali. The suit ended in an *ex-parte* decree dated 25.07.2006. Mr.S.Stainslaws filed an application in I.A.No.18092 of 2007 under Order 9 Rule 13 to set aside the *ex-parte* decree dated 25.07.2006.

5. That application was dismissed on 26.08.2010 on the ground that a mere application under Order 9 Rule 13 alone had been filed and was not accompanied by an application under Section 5 of the Limitation Act. The argument of Mr.S.Stainslaws was that the application had been filed within a period of 30 days from the date of knowledge of the decree, as he had not been served with the summons in the suit. On this basis, he preferred C.M.A.No.52 of 2011. By the time ,the appeal was taken up for hearing, Mr.S.Stainslaws passed away and therefore, the subsequent purchaser Mr.P.S.Murali/the civil revision petitioner herein filed C.M.P.No.1254 of 2012. This application was filed to condone the delay of 211 days in filing the petition to set aside the



abatement caused due to the death of Mr.S.Stainslaws. The learned Judge held that the petitioner had not filed an affidavit of the legal heirs of the appellant and that the date on which the *ex-parte* decree was passed, he had no right and consequently he has no right to continue with the appeal. On that score, the application came to be dismissed. Aggrieved by the same, the CRP.No.1536 of 2015 has been presented. Insofar as C.R.P.No.1781 of 2015 is concerned, this application was filed to set aside the Order and decreetal order of the learned Appellate Judge in C.M.A.No.52 of 2011.

6. I heard Ms.Chitra Sampath appearing for Mr.T.S.Baskaran and Mr.Mukund, learned Senior Counsel who appeared on behalf of Mr.V.Babu. I have gone through the records and heard the arguments of either side.

7. The facts narrated above are not in dispute. The property belonged to the plaintiffs who had alienated the same in favour of Kodandaraman, husband of the second defendant. She in turn sold the property to Vasanthalaxmi and Vasanthalaxmi had alienated the property to Virudhammal and from Virudhammal, the property has come to the hands of Murali. In other words, the first defendant who had purchased the property from Pushpavalli, the wife



of the Kodandaraman is today the predecessor in title of Mr.Murali. Therefore, by virtue of Order 22 Rule 10 read with Section 146 of the Code of Civil Procedure, he is a person interested in the said proceeding. The question of filing an affidavit from the legal representatives of Mr.S.Stainslaws does not arise because whatever rights Mr.S.Stainslaws had in the property, he had sold it in favour of Vasanthalaxmi. As narrated above, from Vasanthalaxmi it went Virudhammal and from Virudhammal, the property has come to Mr.Murali. The definition of a legal representative under Section 2 (11) of the CPC includes even a person who intermeddles with the property.

8. Mr.Murali cannot be said to be an intermeddler as he succeeds to this particular estate which went in favour of Mr.S.Stainslaws by virtue of alienation. Therefore, he is a proper and a necessary party and a legal representative of the first defendant/Mr.S.Stainslaws.

9. Being a 3rd party to the appeal he could not have followed the appeal on a day to day basis. In fact even the legal representatives of Mr.S.Stainslaws would not have kept themselves abreast with the court proceedings that had happened on his death. The delay is not huge but only of 211 days. Therefore,



having come to the conclusion that Mr.P.S.Murali is the legal representative of the sole appellant/first defendant, I am of the view that he is entitled to continue the proceedings initiated against the property of which he is a purchaser. Consequently, the order passed by the court below in C.M.P.No.1254 of 2012 in dismissing the application stating the petitioner has no interest in the property is set aside.

10. The delay caused in filing to set aside the abatement is condoned. Consequently, the abatement caused due to the death of Mr.S.Stainslaws is set aside.

11. In light of this order, the appellant court is requested to record Mr.P.S.Murali as the legal representative of Mr.S.Stainslaws. C.R.P. (NPD).No.1536 of 2015 stands allowed.

12. Since I have allowed the C.R.P. (NPD).No.1536 of 2015, C.R.P.(NPD).No.1781 of 2015 will also stand allowed. The appeal shall stand restored on to the file of the learned II Additional City Civil Court at Chennai who shall continue the proceedings and decide the issue. No costs. Connected Civil Miscellaneous Petitions are also closed.



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28.07.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No

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To:
The II Addl City Civil Court,
Chennai.

V. LAKSHMINARAYANAN, J.

nst

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