



WEB COPY



C.R.P.(NPD)No.622 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(NPD)No.622 of 2021
and CMP.No.5350 of 2021

Sankar

.. Petitioner

VS

1.Radha (Died)

2.Viruthambal

.. Respondents

(R2 impleaded vide order of this Court dated 31.07.2023
made in CMP.Nos.5543, 5546 & 5548 of 2023 in
CRP(NPD)No.622 of 2021)

Petition filed under Section 115 of the Code of Civil Procedure against the fair and decretal orders dated 29.08.2019 passed in E.A.No.77 of 2011 in E.P.No.63 of 2009 in O.S.No.199 of 2003 on the file of the Principal Sub Court, Vridhachalam.

For Petitioner : Mrs.R.Meenal

For Respondents: : Mrs.B.N.Sivagamasundari

ORDER

O.S.No.199 of 2003 was a suit for maintenance and for consequential relief. The said suit was presented by the respondent judgment debtor against her husband Balaraman. The suit was decreed



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on 24.08.2005. When the decree was put into execution, one Sankar claimed to be a legatee under a “Will” written by Balaraman. He stated that the decree is inexecutable because Balaraman is dead and the property now stands vested in him by virtue of the Will dated 09.10.2007. Apart from that, he would argue that since the judgment debtor is dead, there is no liability to pay maintenance.

2.I heard Mrs.R.Meenal, learned counsel appearing for the petitioner and Mrs.B.N.Sivagamasundari, learned counsel appearing for the respondents. I have carefully perused the records.

3.The decree is one for maintenance. The settled position of law is that the persons, who inherited the property or to whom the property vests with by a “Will” written by a judgment debtor are duty bound to satisfy the decree. There is no gain in saying that on the death of the judgment debtor, the decree becomes invalid. The decree holder having got maintenance against the judgment debtor, she is entitled to proceed as against the property. That is exactly what has been done in this case.

4.The argument that due to the execution of the “Will”, the decree has become inexecutable is erroneous. At best, the person who claims to be a legatee steps into the shoes of the judgment debtor and is answerable to the decree to the extent to which the property has come into his hands.



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There is no dispute that the property, which is the subject matter of charge created on 24.08.2005, has come into the hands of the civil revision petitioner. He is liable for the payment of the maintenance amount till it is fully satisfied.

5.On the second point that since the judgment creditor is no more, the decree has become inexecutable is a very unique proposition. I am not willing to agree with the said proposition.

6.The plaintiff decree holder will be entitled to maintenance and her legal representatives are entitled to execute the decree till the date of her death. That amount having been crystallised, the civil revision petitioner will be answerable from the estate of the deceased Balaraman to the estate of the deceased Radha.

7.With this clarification, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

31.07.2023
(2/2)

Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation:Yes/No
vs

To
The Principal Sub Court,
Vridhachalam.



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V. LAKSHMINARAYANAN,J.

VS

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31.07.2023