



CRP.No.3654 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.3654 of 2016 and
CMP.No.18582 of 2016

Perumal Naidu

... Petitioner

Vs.

Veeraraghavan(died)

1.M.S.Rangamani

2.Sujatha Sriram

3.Lalitha Ragavendran

Muthukrishnan(died)

4.Rajamammal

5.Murali

... Respondent

PRAYER: Civil Revision petition is filed under Section 115 of CPC against the order and decree dated 12.07.2016 made in EA.No.451 of 2015 in EP.No.177 of 2005 in OS.No.706 of 1990 on the file of the Principal District Munsif, Cuddalore.

For Petitioner : Mr.P.Dinesh Kumar

For Respondents

For R1 & 2 : Mr.K.G.Vasudevan

For R3,4,5 : No appearance

ORDER

This petition has been filed to set aside the order and decree dated



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12.07.2016 made in EA.No.451 of 2015 in EP.No.177 of 2005 in OS.No.706 of

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1990 on the file of the Principal District Munsif, Cuddalore, thereby allowed the petition filed under Section 50 of CPC to substitute the fifth respondent therein as the legal representative of the deceased second respondent therein.

2. Heard, the learned counsel for the petitioner and the learned counsel for respondents 1 & 2.

3. One of the deceased respondents herein i.e. Veeraraghavan filed suit for specific performance on the strength of the agreement for sale executed by one, Muthukrishnan as power holder on behalf of his principal i.e. the petitioner herein in OS.No.706 of 1990. It was decreed in favour of the said Veeraraghavan. On the strength of the decree, after the death of the decree holder, his legal heirs i.e. the respondents 1 & 2 herein filed execution petition in EP.No.177 of 2005 for execution of the decree passed in OS.No.706 of 1990. While pending the execution petition, the power holder i.e. the said Muthukrishnan died. Therefore, the first and second respondents herein filed petition to implead his legal heirs and the same was allowed and the respondents 4 & 5 herein were impleaded as parties in the execution petition. However, they



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remained exparte and the execution court executed sale deed in favour of the first and second respondents herein by the registered sale deed dated 18.02.2008.

4. It is pertinent to note here that the said Veeraraghavan filed suit for specific performance as against the said Muthukrishnan in his personal capacity and not in the capacity of power holder. In the meanwhile, the principal i.e. the petitioner herein executed settlement deed in favour of his son dated 20.08.2001. On the strength of the said settlement deed, his son executed sale deed in favour of one, Ezhaimuthu. Thereafter, the first and second respondents filed second execution petition for delivery of possession in EP.No.89 of 2009. In the said execution petition, the said Ezhaimuthu i.e. the purchaser of the suit property filed petition under Order 21 Rule 97 of CPC and sought for dismissal of the execution petition. Thereafter, the first and second respondents woke up and found the mistake committed by them that instead of adding the said Muthukrishnan as power holder of the principal i.e. the petitioner herein, they added him in his personal capacity.

5. That apart, after his demise, the first and second respondents



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impleaded his legal heirs as parties in the execution petition in EP.No.177 of 2005. They remained exparte and as such, the execution court itself executed sale deed in favour of the first and second respondents herein in the name of the legal representatives of the said Muthukrishnan i.e. the fourth and fifth respondents herein. Now the first and second respondents filed petition to substitute the principal i.e. the petitioner herein in the first execution petition i.e. EP.No.188 of 2003 under Section 50 r/w 151 of CPC. Admittedly, the petitioner was not a party to the suit and he was not impleaded in the execution petition while executing the sale deed in favour of the respondents 1 and 2 herein. After filing the petition under Order 21 Rule 97 of CPC, the respondents 1 & 2 herein filed the present petition to substitute the petitioner in place of the said Muthukrishnan. Already the decree was executed and the sale deed was executed in favour of the respondents 1 & 2 herein. After the said Muthukrishnan died in the year 1997, in order to substitute his principal, in the year 2015, the respondents 1 and 2 filed the present petition. It is barred by limitation as contemplated under Article 137 of Limitation Act. Accordingly, any other application for which no period of limitation has been provided under the Limitation Act, Article 137 would apply and thus, the application to substitute the principal in the place of the deceased power holder ought to have filed



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within a period of three years. Therefore, the present application is also clearly barred by limitation. Though there is no dispute in respect of execution of power of attorney by the petitioner in favour of the said Muthukrishnan in respect of the suit property, the said Veeraraghavan failed to file the suit in the capacity of power agent of the principal i.e. the petitioner herein.

6. In view of the above, the impugned order passed by the court below warrants interference. Accordingly, the order and decree dated 12.07.2016 made in EA.No.451 of 2015 in EP.No.177 of 2005 in OS.No.706 of 1990 on the file of the Principal District Munsif, Cuddalore are set aside and this civil revision petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

02.01.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To
The Principal District Munsif,
Cuddalore.

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