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C.R.P.(NPD)No.2691 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P(NPD)No.2691 of 2019
and CMP.No.17738 of 2019

Krishnasamy Chettiar (Died)
Govindasamy Chettiar (Died)

- 1.Jayam
- 2.G.Rajendran (Died)
- 3.G.Gajendran
- 4.G.Nagendiran
- 5.G.Selvendiran
- 6.G.Balavendran
- 7.R.Vasanthy
- 8.S.Amudha
- 9.Selvi
- 10.Tayanayaguy
- 11.Vijayendran @ Rengan
- 12.R.Rajalakshmi

... Petitioners

(P10 to P12 brought on record as LR's of the deceased Petitioner-2 Viz.G.Rajendran vide Court order dated 13.07.2023 made in CMP.No.6477 of 2021 in CRP.No.2691 of 2019)

VS

Velu Udayar (Died)

- 1.Poongothai
- 2.Santhi
- 3.Ramamurthy



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4.Vasuki
5.Vasanthi

.. Respondents

Petition filed under Article 227 of the Constitution of India against the Order dated 09.04.2019 made in the Memo filed in E.A.No.103 of 2018 in E.P.No.26 of 2004 in O.S.No.7 of 1977 on the file of Principal District Munsif Court, Karaikal to set aside the same.

For Petitioners : Mr.R.Thirugnanam

For Respondents : Mr.T.M.Naveen (for R3)

No Appearance (for R2, R4 & R5)

R1 - Died

ORDER

The petitioners before me are the judgment debtors. The suit had been presented in O.S.No.7 of 1977 on the file of the learned Principal District Munsif Court, Karaikal. The suit was decreed on 29.11.1979. An appeal in A.S.No.1 of 1980 was allowed on 28.02.1981. The Second Appeal, which was preferred therefrom in S.A.No.112 of 1982 was allowed on 19.12.1991.

2.On the basis of the decree obtained, an Execution Petition was filed in E.P.No.26 of 2004. In the said Execution Petition, the civil



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revision petitioners filed an application under Section 47 of the Code of Civil Procedure in order to declare the decree is inexecutable. The application was dismissed by the trial Court on 22.07.2004. Against the order passed under Section 47, a civil revision petition was preferred in CRP.No.397 of 2005 and the same was dismissed on 06.06.2008.

3.In the meantime, the Execution Petition was closed, perhaps for statistical purposes, with liberty to restore the E.P., if the need arises. After the disposal of CRP.No.397 of 2005 on 06.06.2008, the judgment creditors filed E.A.No.103 of 2018 to restore E.P.No.26 of 2004. In the said application, notices were issued to the parties and they also entered appearance through their counsel. At the time of issuance of notice, it came to the knowledge of the parties as well as the Court that the first judgment debtor, Krishnasamy Chettiar had passed away. Therefore, applications were filed in E.A.No.159 of 2018 in E.A.No.103 of 2018 in E.P.No.26 of 2004 and the same was pending.

4.Finding that the matter is pending consideration and being delayed, the judgment debtors filed a memo stating that they want to withdraw the E.P. with liberty to file a fresh petition to re-open E.P.No.26 of 2004. The judgment debtors filed objection through the third respondent on the ground that while they had no objection for



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withdrawal of the petition filed to restore E.A.No.103 of 2018, they have strong reservation for liberty being given for filing a fresh application on the same cause of action.

5.Considering the objections of both sides, the Court decided to order the memo and grant liberty to the parties to restore the E.P. by filing a fresh application. Challenging the same, the present revision petition has been presented.

6.I heard Mr.R.Thirugnanam, learned counsel, who appeared for the judgment debtors/civil revision petitioners and Mr.T.M.Naveen, learned counsel appearing for the decree holder.

7.Mr.Thirugnanam would contend that by way of a memo, liberty should not have been granted and an appropriate application should have been filed together with an affidavit and petition. He would also bring to my notice, a judgment passed by this Court in ***P.T.Lee Chengalvaraya Naicker Trust v. S.Shanmugam and others [2014 (5) CTC 465]***. In particular, he would draw my attention to paragraph No.22 and would state that when applications are pending for consideration before a Court, filing of a memo seeking an order for issuance of necessary directions is not a desirable/prudent practice. Relying on the judgment, he would state that a memo ought to be filed only to record certain facts



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in a proceeding and not seeking liberty to file a fresh petition.

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8.I have to point out that the judgment was rendered in the circumstances of a scheme suit under Section 92 pending on the Original Side of the Madras High Court. The procedure followed by the Original Side of the Madras High Court is different from the procedure followed by the District Judiciary. Insofar as the District Judiciary is concerned, the procedure that they adopt is governed by virtue of the rules framed by the Court under Section 122 of the Code of Civil Procedure read with Article 227 of the Constitution of India. These are statutory rules and which have been notified as the Civil Rules of Practice and Circular Standing orders of the High Court.

9.It is here that I wish to recollect the judgment passed by this Court in *Mangayarkarasi v. Suseela and others* [AIR 2000 MADRAS 266] dealing with a similar issue. This Court was pleased to hold that an opposite party cannot question the authority of the counsel in signing the memo on behalf of his client and cannot insist that only the party should sign and file the same. The objection that only an affidavit and petition should have been filed and not a memo through the counsel, fails in the light of the categorical view taken by this Court in the aforesaid judgment.



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10. Apart from that, going through the Civil Rules of Practice, the definition of an “application” is given under Rule 3(2) of the same. An application as per the definition includes, “Execution Petition, Interlocutory Petition, whether written or oral”. There is no particular format in which the application need to be made. Therefore, a memo can be treated as an application within the meaning of Rule 3(2).

11. It is trite that the Code of Civil Procedure and the Civil Rules of Practice are intended to give an opportunity to the parties for a fair hearing.

12. That does not mean, that a decree holder, who has successfully obtained a decree as early as 40 years ago should be denied the benefit of filing a restoration application through a memo. This is especially so when his previous execution petition was closed for statistical purposes. The E.P. itself was closed only on account of the fact that the judgment debtors had taken out an application under Section 47 of CPC. That was finally dismissed. Against which, the civil revision petition was pending before this Court.

13. The procedure, as it is said is only hand maiden of justice and it does not affect the substantive rights of parties. The decree holder having succeeded till this Court and the Section 47 application having



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failed till the Supreme Court, it will be unfair on the part of the Court, if

it had not granted the liberty which had been sought for.

14. Therefore, in the light of the law that has been placed by this Court as well as in the light of the expansive definition given to the word “application” in the Civil Rules of Practice and Circular Standing orders, I am dismissing the revision. Accordingly, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

03.08.2023

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

vs

To

The Principal District Munsif Court,
Karaikal.



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V. LAKSHMINARAYANAN,J.

VS

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