



C.R.P.(NPD)Nos.2675 to 2677 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)Nos.2675 to 2677 of 2017

Ramu Gounder

.. Petitioner in
all the CRPs.

Vs.

T.Muthulingam (died)

Mahendra Varman (deceased)
Represented by his legal heirs

1.Unnamalai (wife)

2.M.Maheswari (daughter)

3.M.Mahalaxmi (daughter)

4.Muniappan

.. Respondents in
all the CRPs.

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against an order dated 15.10.2015 made in unnumbered I.A.Nos...of 2014 in A.S.No.65 of 2011 on the file of the Principal Sub Court, Villupuram.

In all the CRPs.

1/7



WEB COPY



C.R.P.(NPD)Nos.2675 to 2677 of 2017

For Petitioner : Mr. V.Subramani

For R1 & R4 : No appearance

COMMON ORDER

The civil revision petitions arise against an order passed by the learned Principal Subordinate Judge, Villupuram, in dismissing the applications filed under Order XXII Rule 4 of C.P.C.

2. The undisputed facts are, O.S.No.412 of 2009 was presented by the respondent Muthulingam for declaration of title and consequential order of injunction. The said suit was decreed on 29.10.2010. Aggrieved by the same, an appeal was preferred by the defendants/appellants in A.S.No.65 of 2011.

3. The 2nd defendant Mahendrarvarman died on 15.04.2012. He has left behind his wife Unnamalaiammal, two daughters namely, Maheshwari and Mahalakshmi and a son namely, Muniappan, as his legal



C.R.P.(NPD)Nos.2675 to 2677 of 2017

representatives. Unfortunately, the death of the 2nd appellant/Mahendravarman in A.S.No.65 of 2011 was not brought to the notice of the Court. Without being aware of the death of the 2nd appellant, the regular appeal in A.S.No.65 of 2011 was dismissed on 28.09.2012. That is the judgment was pronounced after the death of the 2nd appellant in A.S.No.65 of 2011. The decree that has been sought for in the suit is a joint decree and not a severable one.

4. Three applications were filed by the civil revision petitioner/1st appellant after the disposal of the appeal. They were:

- (i) To condone the delay in filing a petition to set aside the abatement caused due to the death of the 2nd appellant;
- (ii) To set aside the abatement;
- (iii) To bring on record the legal representatives of the deceased 2nd appellant.

5. The said applications were returned by the lower appellate Court



C.R.P.(NPD)Nos.2675 to 2677 of 2017

as not maintainable on 15.10.2015 on the ground that the judgment in A.S.No.65 of 2011 itself had been pronounced on 28.09.2012. It also held that as the counsel had not brought it to the notice of the Court, the Court cannot be found fault with having pronounced the judgment on the merits of the case. Challenging the same, the present revisions have been filed.

6. The position of law in the circumstances where a decree has been passed against a dead person is settled by the judgment of this Court in ***Ganesan and five others vs. Perumal Gounder and another 1995 (II) CTC 549***. Referring to several precedents, the Court held that a judgment passed in ignorance of the death of a party is a nullity as it is an order against the dead person. It further held that in order to give an opportunity to the legal representatives of a deceased to conduct the appeal, the proper procedure to be adopted is that the ineffective decree should be set aside, the appeal to be restored to the file and then, give an opportunity to the parties to file applications to bring them on record.

7. The learned Principal Subordinate Judge, Villupuram, cannot be



C.R.P.(NPD)Nos.2675 to 2677 of 2017

found fault with having returned the applications on the ground that since the appeal had been disposed of, the applications are not maintainable. What should have been done is that the judgment pronounced against the dead person should have been recalled as it is a nullity and an opportunity should have been given to the petitioner to file these applications after the said recall.

8. Therefore, exercising of the powers vested in this Court under Article 227 of the Constitution of India, I set aside the judgment and decree in A.S.No.65 of 2011 dated 28.09.2012 as a nullity, since it was pronounced against the dead person. Following the judgment of this Court in ***Ganesan and five others vs. Perumal Gounder and another*** **1995 (II) CTC 549**, the decree and judgment having been set aside, an opportunity is granted to the civil revision petitioner to represent the applications before the lower appellate Court. On filing of the applications, the learned Principal Subordinate Judge, Villupuram, is requested to number the same and pass appropriate orders in accordance



C.R.P.(NPD)Nos.2675 to 2677 of 2017

with law.

9. With the above observations, the Civil Revision Petitions are disposed of. No costs.

10. The Office is directed to return the applications, which have been presented in original before this Court, to the learned counsel for the petitioner to enable him to represent it before the lower Court.

25.07.2023

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

To

The Principal Subordinate Judge, Villupuram.

6/7



WEB COPY



C.R.P.(NPD)Nos.2675 to 2677 of 2017

V.LAKSHMINARAYANAN,J.

Kj

C.R.P.(NPD)Nos.2675 to 2677 of 2017

25.07.2023