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*C.R.P.(NPD)Nos.376 & 2923 of 2017*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2023

CORAM:

**THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

C.R.P.(NPD)Nos.376 & 2923 of 2017  
and CMP.Nos.13786 & 1655 of 2017 & 11878 of 2018

M.Palani

... Petitioner in both CRPs

Vs.

Muniammal (Deceased)

1.Malliga

2.Kanchana

3.V.Sathish Kumar

... Respondents in both CRPs

**PRAYER in CRP(NPD)No.376 of 2017:** Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, against the fair order and decreetal order of the Learned IX Asst. City Civil Judge, Chennai made in E.A.No.6307 of 2015 in I.A.No.20884 of 2000 in O.S.No.5497 of 1996 dated 01.10.2015.

**PRAYER in CRP(NPD)No.2923 of 2017:** Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, against the Order and Decreetal Order of the Learned IX Asst. City Civil Judge, Chennai made in E.P.No.221 of 2016 in I.A.No.20884 of 2000 in O.S.No.5497 of 1996 dated 17.06.2017.



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(In both CRPs)

For Petitioner : Mr.B.Dineshkumar

For Respondents : Mr.B.Ganeshamoorthy (for R1)

Mr.B.K.Sreenivasan (for R2 & R3)

**COMMON ORDER**

As the issue involved in both the revisions in CRP.Nos.376 of 2017 and 2923 of 2017 are common, they are taken up for disposal together.

2.A suit for partition was presented in O.S.No.5497 of 1996. The mother and two daughters were arrayed on one side and the son on the other. The suit property fell for partition on account of the death of the father Mari Naicker. The plaintiffs claimed 1/4<sup>th</sup> share each. The suit was decreed by judgment and decree dated 15.02.2000. As per the decree, each of the plaintiffs were given 1/4<sup>th</sup> share and the defendant was given 1/4<sup>th</sup> share. In order to divide the property, an Advocate Commissioner had been appointed in I.A.No.20884 of 2000. Final decree was also passed. Apart from that, the claim of the plaintiffs for mesne profits was also decreed.



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3.The first plaintiff Muniammal sensing her days on this transitory world was coming to an end, executed a settlement deed in favour of her grandson i.e., the son of the 3<sup>rd</sup> plaintiff. In terms of the settlement deed, she retained life interest and the vested remainder went to the 3<sup>rd</sup> respondent. Muniammal executed the settlement deed on 29.05.2013 and passed away on 24.04.2014.

4.On 05.11.2014, the settlee from the first plaintiff Muniammal, namely, Mr.V.Sathish Kumar filed an application in E.A.No.6307 of 2014 under Order 21 Rule 16. The purpose of this application was to implead him as the 3<sup>rd</sup> decree holder to the execution proceedings. This was resisted by the civil revision petitioner/judgment debtor on the ground that Mr.V.Sathish Kumar cannot claim the right of mesne profits which had been decreed, since what was settled in his favour was only the undivided share in the property and the mesne profits had not been specifically assigned.

5.It was further argued that Mr.V.Sathish Kumar would get the property only on the death of Muniammal and therefore, he cannot stake



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a claim to the property.

6.The learned Executing Court held in EA.No.6307 of 2014, (the application filed under Order 21 Rule 16 of the CPC) that the question of entitlement of mesne profits can be decided only in the Execution Petition and that by impleading Mr.V.Sathish Kumar as a party decree holder, it would not affect the right of the judgment debtor. Challenging this order in E.A.No.6307 of 2014, CRP.No.376 of 2017 has been presented.

7.When the main Execution Petition was taken up, on finding that the judgment debtor had not paid the share of the mesne profits, the Court attached the property allotted to the plaintiff in the suit. Aggrieved by the order of attachment, CRP.No.2923 of 2017 has been presented.

8.I heard Mr.B.Dinesh Kumar, learned counsel appearing for the petitioner, Mr.B.Ganeshamoorthy, learned counsel for the 1<sup>st</sup> respondent and Mr.B.K.Sreenivasan, learned counsel appearing for the respondents 2 and 3. I have gone through the records and I have perused the order which has been impugned in both the matters.



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9.The decision that I have to take is whether Muniammal's legal representative can execute the decree which had been obtained by her. The solution lies in a bare reading of Section 146 of the CPC. As per Section 146, a person who is a legal representative of the deceased is entitled to execute the decree on behalf of a deceased decree holder. This proposition is no longer *res integra* and has been settled by the Supreme Court in ***Vaishno Devi Construction v. Union of India and others reported in 2022 (2) SCC 290.***

10.Interpreting Section 146, the Supreme Court has held that a legal representative of a deceased is entitled to come on record, not only by virtue of Order 21 Rule 16 of CPC, but also in terms of Section 146.

11.Applying the said principle to the case at hand, Sathish Kumar the 3<sup>rd</sup> respondent is not claiming any personal right over the property, but by virtue of the settlement deed dated 29.05.2013, is only representing the estate of the deceased Muniammal before the Court.

12.The definition of a legal representative under Section 2(11) is so wide that it even includes an inter meddler of a property. Fortunately,



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Mr.V.Sathish Kumar the 3<sup>rd</sup> respondent is not an inter meddler, but a person claiming by virtue of a registered settlement deed executed by the deceased first decree holder on 29.05.2013.

13.By virtue of the definition under Section 2(11) of the CPC, Mr.V.Sathish Kumar represents the estate of the deceased Muniammal. In such capacity, whatever proceedings initiated for the purpose of mesne profits would go only in discharge of the decree vested in the estate of the deceased Muniammal.

14.The position of law being settled, a combined reading of Section 2(11), Section 146 and Order 21 Rule 16 of the CPC, forces me to come to the conclusion, that Mr.V.Sathish Kumar is entitled to execute the decree. Consequently, the order impugned in CRP.No.376 of 2017 has to be upheld.

15.At this stage, Mr.B.Dinesh Kumar, learned counsel for the petitioner submits that he has deposited 50% of the amount as per the directions given by this Court on 22.08.2017. Mr.B.K.Sreenivasan states that the amount has also been withdrawn by the respondents 1 and 2.



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16.Mr.Dinesh Kumar would request time be granted in order to settle the remaining amount. Accordingly eight (8) weeks time is granted to Mr.M.Palani/civil revision petitioner to pay the remaining amount directly to respondents 1 to 3, the remaining amount of mesne profits in the ratio of 1/3<sup>rd</sup> each. Mr.V.Sathish Kumar is permitted to withdraw the amount deposited by Mr.M.Palani to the credit of E.P.No.221 of 2016 by filing an appropriate application. The attachment that has been passed by the Executing Court on 17.06.2017 will stand raised on proof of payment of the remaining balance of 50%.

17.In fine, CRP.No,376 of 2017 stands dismissed. CRP.No.2923 of 2017 stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

**14.09.2023**

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

vs

To

The IX Assistant City Civil Court,  
Chennai.

**V.LAKSHMINARAYANAN,J.**

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