



C.R.P.(MD).No.2105 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	23.08.2023
Pronounced on	21.12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.2105 of 2023

and

C.M.P.(MD)No.10610 of 2023

D.Lazarus (Died)

1.Hepsiba Gnana Glorital

2.Anisha Gnana Merlibah

3.Jerush Deva Kiruba

... Revision Petitioners

(Cause title is accepted
vide Court order dated
17.08.2023 made in
C.M.P.(MD)No.
10281/2023 in C.R.P.
(MD)SR No.
60155/2023 by KGTJ)

Versus

T.Saroja Justus

... Respondent



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Prayer : The Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to allow the Civil Revision Petition by setting aside the fair and decretal order passed in E.P.No.19 of 2022 in O.S.No.224 of 2018, dated 03.08.2023 on the file of the 1st Additional District Munsif Court, Nagercoil.

For Revision Petitioners : Mr.H.Arumugam

For Respondent : Mr.M.P.Senthil

ORDER

This Revision is preferred as against the order passed in E.P.No.19 of 2022 in O.S.No.224 of 2018 on the file of 1st Additional District Munsif Court, Nagercoil, dated 03.08.2023.

2. According to the Revision Petitioners, the Respondent/Plaintiff filed a suit in O.S.No.224 of 2018 before the 1st Additional District Munsif Court, Nagercoil for the relief of mandatory injunction to demolish the unlawful construction, constructed by the Defendants on the Plaint 'B' Schedule property and consequentially prayed for prohibitory injunction restraining the Defendant from constructing any



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structure in the 'B' Schedule property and from doing any act detrimental to the safety of the 'B' Schedule property stating that the Respondent/Plaintiff is the absolute owner of the property and since she is residing at United Kingdom and by taking advantage of her absence, the Revision Petitioner/Defendant constructed a wall in the 'B' Schedule property.

3. In the above suit, the Revision Petitioner/Defendant was set *ex parte* and an *ex parte* decree was passed on 03.03.2022. Thereafter, the Respondent herein filed an execution petition in E.P.No.19 of 2022 wherein also the Revision Petitioner remained *ex parte* and an *ex parte* order was passed on 01.07.2023. Thereafter, the Amin came to the property for execution of decree and informed about the *ex parte* decree passed against the father of the Revision Petitioners. The Revision Petitioners thereafter approached their lawyer who advised them to file a memo regarding the death of their father in the execution proceedings.

4. On 03.08.2023, the Revision Petitioners appeared before the Court and submitted a copy of death certificate of their father reporting his death on 22.06.2023 and also informed the Court that the name of their



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father was wrongly mentioned in the proceedings. While the facts remain so, on 03.08.2023, the executing Court allowed the applications filed seeking police protection and to disconnect the electricity connection even after receiving the death certificate filed along with the memo and recording the submissions made by the Revision Petitioners intimating about the death of their father and posted the case for reporting delivery. It is submitted that no proceedings can be initiated against a dead person. The executing Court even after the intimation about the death of their father, ordered for delivery. Aggrieved by this, the present Civil Revision Petition has been filed.

5. The learned counsel appearing for the Revision Petitioners would submit that the father's name of the Revision Petitioners is D. Lazarus Selwin, S/o. Devaraj, but in the plaint it was mentioned as Selvin, S/o.Devadhas and further the Respondent/Plaintiff purposely failed to mention the door number of the house. Subsequently, the father's name of the Revision Petitioners was amended in the plaint and even at that time also, the Respondent/Plaintiff failed to mention the door number of the house. Since the door number was not mentioned, the summons were not served on the Revision Petitioners' father.



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6. It is further submitted that the 3rd Revision Petitioner is working at Chennai and residing along with his family at Chennai with his aged parent and his sister is residing at her matrimonial home. The father of the Revision Petitioners' died on 22.06.2023 leaving behind the Petitioners 1 and 2 as his legal heirs. Since the father of the Revision Petitioners died during pendency of the execution petition, the Trial Court without bringing his legal heirs on record, allowed the execution petition on 01.07.2023. The executing Court has committed serious errors in allowing the police aid petition and petition to disconnect the electricity connection in the petition premises even after receiving the death certificate of the father of the Revision Petitioners.

7. The learned counsel would submit that when a party to the proceedings died, no further action shall be proceeded against a death person. But in this case, even after the death was taken note by the Trial Court, further direction was given to report delivery which is totally perverse and against the law. Therefore, he prays for setting aside the orders passed in E.P.No.19 of 2022 in O.S.No.224 of 2018, dated 03.08.2023.



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8. The learned counsel appearing for the Revision Petitioners would submit that the executing Court passed an order without the knowledge that the judgment debtor had died. Therefore, the orders passed against the dead person is nullity and there is no question of application of doctrine of merger and therefore, the decree under execution was a nullity in the eye of law and the execution proceedings are liable to be dismissed.

9. On the other hand, the learned counsel appearing for the Respondent would submit that the execution proceedings had been initiated in accordance with the decree which was passed by the Trial Court. The failure on the part of the Respondent/Plaintiff to implead the legal heirs of the deceased judgment debtor would not adversely affect the Respondent/decreed holder. Therefore, the Trial Court has rightly allowed the execution petition.

10. He would submit that Order 22 Rule 6 contemplates that there shall be no abatement by reason of death by either party between the conclusion of hearing and on pronouncement of the judgment, the judgment may, in such case, be pronounced against the said defendant notwithstanding



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the death and shall have the same force and effect as it has been pronounced before the death took place. But in the present case, the father of the Revision Petitioners died only during the execution proceedings. Since judgment was pronounced during the lifetime of the father of the Revision Petitioners, the Respondent/Plaintiff is entitled to execute a decree passed in his favour. Therefore, the death of the father of the Revision Petitioners has no binding effect in executing the decree passed against him. Hence, the above petition is devoid of merits and liable to be set aside.

11. Heard on both sides and perused the records.

12. Admittedly, the Respondent/Plaintiff filed a suit in O.S.No. 224 of 2018 for mandatory injunction and for permanent injunction against one D.Lazarus Selwin. In the above suit, the defendant was set *ex parte* and an *ex parte* decree was passed on 03.03.2022. Thereafter, the Respondent filed the Execution Petition in E.P.No.19 of 2022 wherein also the defendant in the suit was set *ex parte* and an *ex parte* order was passed on 01.07.2023.

13. According to the Revision Petitioners, only when the Amin



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came to the property for execution of the decree, the Revision Petitioners came to know about *ex parte* decree passed against their father D.Lazarus Selwin. On verification, the Revision Petitioners came to know that the name of their father was not properly and fully mentioned in the suit proceedings. Thereafter, the Revision Petitioners made appearance on 03.08.2023 before the Trial Court and submitted a copy of death certificate of their father along with the memo reporting his death on 22.06.2023 and also informed the Court about the name of their father which was wrongly mentioned in the suit proceedings. The Revision Petitioners would submit that their father D.Lazarus Selwin died on 22.06.2023 leaving the Revision Petitioners as his legal heirs and that during pendency of the Execution Petition, the father of the Revision Petitioners died. The Trial Court ought to have impleaded the legal heirs of the deceased defendant and without bringing the legal heirs on record, the Trial Court ought not to have allowed the Execution Petition which is against the provision of Code of Civil Procedure. Hence, the orders passed in E.P.No.19 of 2022 are liable to be set aside.

14. The learned counsel appearing for the Revision Petitioners



would submit that without bringing the legal heirs on record, the decree passed in the suit gets abated. To support his contention, he has relied upon the decision case reported in **2001 5 SCC 570**. In the instant case, the deceased Defendant/Judgment debtor died only during the pendency of the execution proceedings. At the time of passing of decree, the Defendant was alive. Therefore, it cannot be said that the decree was passed against a dead person. It is now settled in law that one of the parties dies after the case was heard and the judgment was pronounced, and therefore, the judgment does not become nullity. In the instant case, only from the report of the Court Amin, the decree holder/Plaintiff came to know about the death of the Defendant. Hence, the legal heirs of the Defendant were not brought on record in the execution proceedings. Even then, failure on the part of the Plaintiff to implead the legal heirs of the deceased Defendant would not adversely affect the Plaintiff/Decree holder in proceeding in the execution proceedings.

15. However, the question arises whether the decree holder, whose decree is unsatisfied when the sole judgment debtor dies executing that decree without having recourse to Section 60. The Section says whether



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the judgment debtor died before the decree has been fully satisfied, the holder of the decree may apply to the Court to implead the legal representatives of the deceased judgment debtor. Notice must be issued to the legal representatives as required by an Order 21 Rule 22 of Code of Civil Procedure.

16. Moreover, in the pending execution proceedings, there is no necessity to make a fresh execution application but the execution will be continued from the stage where it was when the judgment debtor died. Therefore, with the above observations, the Civil Revision Petition is disposed of. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

21.12.2023

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Index: Yes/No

Speaking Order : Yes/No

To

The 1st Additional District Munsif Court,
Nagercoil.

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K.GOVINDARAJAN THILAKAVADI,J.

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ORDER MADE IN

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