



C.R.P(NPD)(MD).No. 2464 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.08.2023

CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P(NPD)(MD).No. 2464 of 2017
and CMP(MD)No.11677 of 2017

1. Ummasalima
2. Hameetha Bivi
3. Haja Najmudeen

... Petitioners

Vs

1. Nasrudeen
2. Abdul Kuthoos Rowthar

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order passed in E.A.No.46 of 2016 in E.P.No.28 of 2010 in A.R.O.P.No.26 of 1997, dated 20.03.2017 on the file of the Principal Sub Court, Thanjavur by allowing this Civil Revision Petition.

For Petitioners : Mr.S.T.A.Ebenezer

For Respondents : No Appearance



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ORDER

To set aside the order passed in E.A.No.46 of 2016 in E.P.No. 28 of 2010 in A.R.O.P.No.26 of 1997, dated 20.03.2017 passed by the Principal Sub Judge, Thanjavur, the revision petitioners has filed this Civil Revision Petition before this Court.

2.The petitioners are the legal heirs of one Mohammed Saliq. The said Mohammed Saliq is the Judgment debtor and after his demise, the petitioners were impleaded as his legal heirs. The learned counsel for the petitioners would submit that, even the first petitioner viz., Ummasalima is died and his legal heirs are the petitioners 2 and 3. Despite the names of respondents are printed in the cause list, no one appeared on their behalf. For the sake of convenience, the parties are referred to as per the litigative status in the suit.

3.The brief facts, which arise for the filing of the instant civil revision petition are as follows:

(i)It appears that originally order of arrest was sought for by the decree holder and subsequently the same was amended with the prayer



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for attachment of property of the Judgment debtor.

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(ii) Even after the demise of Judgment debtor and after impleadment, the petitioners have objected the attachment, on the ground that under Muhammedan Law, the property cannot be attached and that after demise of original Judgment debtor, the legal heirs cannot be impleaded by the transferee Court. However, the trial Court has referred the Section 39 of Muhammedan Law and dismissed the petition filed by the legal heirs of Judgment debtor and attached the petition mentioned property.

(iii) Aggrieved with the said order, the petitioners has filed the present revision petition.

4. I have given my anxious consideration to either side submission.



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5.The one and only objection raised by the petitioners is that under Section 43 of Muhammedan Law, each sharer is liable for debts of the deceased, only to the extent of the share of debts proportionate to his share of his estate. In this case, though the learned counsel for the petitioners objected the petition, he is not in a position to explain as to how they are not entitled to property, which has been attached by the Court below.

6.The Court below has referred Section 39 of the Muhammedan Law and ultimately concluded that from the estate of Mohammed Saliq, the debt can be disbursed, after deducting the expenses to the deceased's funeral expenses, probate proceedings and wages to any persons, those who rendered services to the deceased. For ready reference, Section 39 of Muhammedan Law is extracted hereunder:

“The estate of the deceased Mohadan is to be applied successively in payment of

(1) His funeral expenses and death bed charges

(2) Expenses of detaining probate, letters of administration

(3) Wages of service rendered to the deceased



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(4) Other debts of the deceased according to their respective priorities if any, and hence one of the estate of the deceased first respondent/Judgment debtor the respondents 3 to 5 are liable to pay the petition mentioned execution petition mentioned amount.”

7. Therefore, the Court below on a very sound principle rejected the objections raised by the petitioners herein. Apart from the above objections, the petitioners have also raised a strange objection before the transferee Court that, when decree has been transmitted, the transferee Court has no power to implead the legal heirs of the deceased Judgment debtor. This Court is not in a position to agree with the submission of the learned counsel for the petitioners. Because the decree being transmitted to the transferee Court, under whose jurisdiction the properties sought to be attached is situated. Therefore, the transferee Court has every power as that of transferror Court.

8. Considering the above discussion, there is no merit in the petition. Accordingly, **this Civil Revision Petition stands dismissed.** Considering the checkered history, the trial Court is directed to dispose the



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execution proceedings in E.P.No.28 of 2010 as expeditiously as possible, preferably, within a period of three months, from the date of receipt of a copy of this order. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

08.08.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

PNM

To

1.The Principal Sub Judge, Thanjavur.

2.The Section Officer

Vernacular Section,

Madurai Bench of Madras High Court,

Madurai.



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C.KUMARAPPAN, J.,

PNM

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