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1 Rev.Appln.No.5 /2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

Rev.Appln.(MD).No. 5 of 2020

Antony Xaviour Nadar (died)

1. Mrs.Isabella Rani
2. Mr.Ricardo Alson Thomas Kovil Pillai
3. Mr.Rosario Ignacius Kovil Pillai

... Petitioners/LRS of 9th Respondent/ LRS of 9th Plaintiff

Vs

Xavier Cardoza (died)

Packiam Cardoza (died)

1. X.Dorin
2. X.Bombai Rani
3. X.Antoniammal
4. Delphin
5. Deepa Kardaoza
6. Anthony Shaji

7. Sindhuja



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... Respondents 1 to 7 / Appellants 3 to 9/LRS of 1st Defendant

Kovilpillai Nadar (Died)
Sornammal (Died)
Tharammal (Died)
Vijayammal (Died)

Antonymuthu Nadar (died)

8. Joseph Bakiaraj Nadar

... 8th Respondent/6th Respondent/6th Plaintiff

9. James Baskara Nadar

... 9th Respondent/8th Respondent/8th Plaintiff

Francis Ignatious Rotch Nadar (Died)

10. Peter Jebakumar Nadar

11. Annal Mohideen

12. Sivaraman

13. Marimuthu

14. P.Natarajan

... Respondents 10 to 14 / Respondents 11 to 15/Defendants 2 to 5

PRAYER: Review Application filed under Order XLVII Rules 1 & 2 read with 114 of CPC, against the Judgment and Decree dated 30.06.2017 in A.S.No. 702 of 1992 passed by Hon'ble Mr.Justice C.V.Karthikeyan on the file of this Hon'ble Court.



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For Petitioner : Mr. H.Arumugam
For Respondents : Mr. V.Radhakrishnan
Senior Counsel for
Mr.S.Kadarkarai

ORDER

This review had been filed seeking re-visitation of the Judgment in A.S.No. 702 of 2002 dated 30.06.2017.

2. The primary ground on which such request is placed is that though the Judgment had been passed on merits after examining the pleadings and the records available, it suffered consequent to the fact that the 9th respondent therein was a dead person and it was therefore contended that the Judgment itself should be declared as nullity. This contention is advanced by the legal representatives of the 9th respondent. Two of the legal representatives were however also parties to the First Appeal.

3. Be that as it may, it is uniformly represented by both Mr. V.Radhakrishnan, learned Senior counsel appearing on behalf of the respondents/Appellants in the Appeal suit and by Mr.H.Arumugam, learned counsel for the review applicants that the issue of abatement



would not come. To that extent, I would express my gratitude for forwarding to that particular view.

4. The issue is whether the Judgment and Decree passed against the dead person would be void or voidable had come for consideration before the Supreme Court in the Judgment reported in **2023 LiveLaw (SC) 261 [Shivshankara and another Vs. H.P.Vedavyasa Char]**.

5. The view is two fold. It could be void or voidable at the instance of the legal representatives of the deceased, who can take a decision to abide by the Judgment. If they are aggrieved, they should move an application seeking it to be declared as void.

6. The First Appeal in the instant case arose out of suit for specific performance. The defendants were the appellants in the Appeal Suit questioning a decree for specific performance.

7. On appreciation of the evidence adduced and on perusal of the records, this Court had hold that the Appeal Suit was to be allowed and thereby dismissed the Original suit. This would effectively mean that the property was retained in the hands of the defendants. Subsequently, various transactions had taken place including numerable sales of portions



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of the property. It must be mentioned that the property involved is a cinema theater, Joseph Talkies at the heart of Tuticorin and measuring to quite a large extent of land. It came to be divided and sub divided and were sold.

8. The applicants herein are purchasers. Consequent to those issues relating to the sale and recovery of possession, O.S.No. 47 of 2015 had been filed before the learned II Additional District Court at Tuticorin. The said suit had moved in its own pace and thereafter on conclusion, E.P.No. 7 of 2017 had also been filed. In the said Execution Petition as is always, Execution Application has also been filed in E.A.No. 7 of 2021 in E.A.No. 51 of 2018. I am informed that the review applicants are contesting those proceedings.

9. It is pertinent to point out that the suit for specific performance from which the Appeal Suit emanated or the review application has been filed, is not the subject matter of O.S.No. 47 of 2015. In other words, the agreement of sale which was the crux of the issue in the Original Suit and in the Appeal Suit had not been put to test and is not an issue in the Original Suit consequent to the Judgment, in which the Execution Petition



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aforementioned is now pending. Therefore, the Judgement in the Appeal suit would not affect the rights of the parties therein and I am confident that the learned II Additional District Court at Tuticorin, would keep mind that the issue in the Appeal suit was an entirely different issue relating to specific performance of an agreement which performance had been negatived by the Court and no further challenge made to the same.

10. I would impress on the learned II Additional District Judge, to move forward with the issues in E.A.No. 51 of 2018, E.P.No. 7 of 2017 and O.S.No. 77 of 2015 in manner known to law on the basis of the available records and on the basis of the submissions made therein. The parties therein need not place any reference to the agreement of sale, performance of which has been negatived by this Court. The Judgment in the Appeal Suit would not affect further proceedings in the aforementioned Execution Application, Execution Petition and the Original Suit.

11. In view of these facts and more particularly also because the legal representatives of the deceased 9th respondent were parties to the Appeal suit, though it is contended there was no effective representation to protect the interest of the 9th respondent, since the parties had dealt with the properties and moved away from the agreement of sale, I hold that it would only an exercise in futility to re-visit the Judgment in the Appeal



Suit.
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12. These facts are recorded since no further right would emanate in reopening A.S.No. 702 of 1992. I would let the matter rest. The parties may participate in the proceedings before the learned II Additional District Court at Tuticorin. The Review Application therefore stands dismissed. No costs.

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Index:Yes/No

Web:Yes/No

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Speaking order : Yes / No



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C.V.KARTHIKEYAN, J.

vsg

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