



CRP.No.1131 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.1131 of 2023

B.Venkatesan

.. Petitioner

Versus

S.Peter Devadass (Deceased)

1.Lidiya Roslin

2.Jesintha Priya

3.Saral Suganthi

4.Frank Moses

5.Angel Jabarani

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed by the learned XXVIII Assistant City Civil Court at Chennai in E.P.No.686/2022 in O.S.No.6221/2021 dated 24.08.2022 by allowing this Civil Revision Petition.

For Petitioner : M/s.T.Jayanthi

For Respondents : Mr.N.Manikandan

ORDER

Challenge has been made to the order dismissing the Execution Petition, the present revision has been filed.



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2. The petitioner/plaintiff has filed a suit in O.S.No.6221/2021 on the file of XXIII Assistant Judge, City Civil Court, Chennai for recovery of money for a sum of Rs.8,90,000/- together with interest at the rate of 24% per annum. The suit has been decreed ex parte on 18.11.2021. Execution Petition was filed in E.P.No.686 of 2022, only in EP proceedings, notices were ordered to Judgment Debtor and it came to the notice of the Court that the judgment debtor died on 15.10.2021, even before the judgment and decree passed against the judgment debtor. Thereafter, the death certificate is also produced by the Court Amin. Subsequently, an application under Order XXII Rule 4 of CPC was also filed by the decree holder for impleading the legal heirs of the deceased judgment debtor, though the legal heirs received notice, they have not appeared before the Court and they were set exparte. Further, the Executing Court found that as the decree is passed against the deceased is not enforceable, accordingly, the E.P.686/2022 was dismissed on 24.08.2022. Challenging the dismissal, this revision.

3. The learned counsel for the petitioner would submit that the decree passed in favour of a dead person is not a nullity and the fact of the death not brought to the notice of the Court, it is only an irregularity and it cannot



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have the effect of making the decree void ab initio and the decree is executable. Further, it is stated that when the Court proceeds with the case ignorance of the fact of the death of person and passes a decree, the decree cannot be treated as nullity. Though it may be a wrong decree, it has to be set aside only in appeal, revision or review. Hence, seeks allowing of the revision.

4. The learned counsel for the respondents submitted that unless an exemption under Order XXII Rule 4 of CPC is obtained in the Civil Court before the judgment is passed, the decree passed against a dead person is nullity in the eye of law.

5. Heard both sides and perused the materials placed on record.

6. Though much reliance has been placed by the petitioner to an order of this Court in the case of *Abdul Azeez Sahib vs. Dhanabagiammal and others* reported in 1981 SCC OnLine Mad 254, wherein, this Court has held as follows:

"4. In the instant case, as the defendants have not chosen to challenge the decree either by way of appeal, revision or review, or to have it set aside in the suit itself by appropriate



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proceedings, it is not open to the executing Court to refuse execution of the decree on the ground that the decree has been passed in favour of a dead person.

5. As the decree passed in ignorance of the death of the plaintiff is a mere irregularity and cannot have the effect of making the decree as one without jurisdiction, the lower appellate Court's finding that the decree is void ab initio is clearly erroneous. "

7. In this regard, the Hon'ble Apex Court in the case of *T.Gnanavel vs. T.S.Kanagaraj and another* made in Civil Appeal No.1259 of 2009 dated 25.02.2009 has held that the exemption to be granted by the court has to be obtained before the judgment is delivered and not after it. The relevant paragraphs reads as follows:

"17. For the reasons aforesaid, we are of the opinion that the High Court had rightly interpreted the provision of Order XXII Rule 4(4) CPC and accordingly held that the decree passed by the trial court on 20th December 2002, in OS No. 3946 of 1999 was a nullity in the eye of the law as the defendant had died during the pendency of the suit for specific performance of the contract for sale and no exemption was sought at the instance of the appellant-plaintiff to bring on record the heirs and legal representatives of the defendant before the judgment was pronounced.

18. There is another submission that needs to be considered at this stage. The learned counsel appearing on behalf of the appellant had contended that the respondents were duty-bound under the provisions of Order 22 Rule 10-A CPC to intimate the knowledge of the death of the defendant to the court as well as to the appellant, which they had failed to do and therefore, the trial court was correct in law to grant



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exemption to the appellant from bringing on record the heirs and legal representatives of the defendant after the decree was passed. As had already been mentioned above, the conditions laid down in the abovementioned Rule are clear to the effect that the exemption to be granted by the court has to be obtained before the judgment is delivered and not after it. Therefore, we are not in a position to accept the contention of the appellant to this effect. Further, the respondents had disputed the fact that they had not intimated the information relating to the death of the defendant to the appellant. This Court is not entitled to go into the question of determining the veracity of the statements made by either party. Before parting with this aspect of the matter, it is also an admitted position that the appellant had not raised the question regarding the applicability of the provision under Order 22 Rule 10-A CPC before the High Court and, therefore, we also cannot permit the appellant from raising such question for the first time in this Court.

8. Therefore, in order to save the decree, the only exemption under Order XXII Rule 4 of CPC has to be obtained before the pronouncement of judgment as against a dead person. That apart, Order XXII Rule 6 of CPC has an exemption and the suit will not abate by the death of the either party between the conclusion of the hearing and the pronouncing of the judgment. Only in these circumstances, the suit will not abate, whereas, to make the decree valid against the dead person, as held by the Hon'ble Apex Court that an exemption under sub-rule 4 to the Order XXII Rule 4 of Code of Civil Procedure ought to have been obtained before the pronouncement of the judgment. But, in this case, no such exemption is obtained by the



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plaintiff/petitioner, hence, the decree dated 18.11.2021 in
O.S.No.6221/2021 on the file of XXIII Assistant Judge, City Civil Court,
Chennai has become nullity and cannot be executed.

9. Such view of the matter, this Court is of the view that the Order of
the Executing Court does not require interference and accordingly, this
revision petition stands dismissed. No costs.

05.11.2024

dhk

Index : Yes/No

Internet : Yes/No

To,

The XXVIII Assistant Judge
XXVIII Assistant City Civil Court
Chennai

N.SATHISH KUMAR, J.,

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