



C.R.P.(PD).No.676 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.676 of 2023

and

C.M.P.No.5355 of 2023

Kiran Puran Batavia (Deceased)

1.Nilesh Puran Batavia

2.Nina Naik Alias Nina Puran Batavia

... Petitioners

VS

K.N.Sanghani (Deceased)

1.Anita Kishorchandra Sanghani

2.Manoj Kishorchandra Sanghani

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order in E.P.No.419 of 2020 dated 10.02.2023 passed by the learned XXV Assistant Judge, City Civil Court, Chennai.



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For Petitioners : Mr.K.Thilageswaran

For Respondents : Mr.V.Raghupathy

ORDER

This Civil Revision Petition arises against the order of the learned XXV Assistant Judge, City Civil Court at Chennai in E.P.No.419 of 2020 in O.S.No.2699 of 2015, dated 10.02.2023.

2. Heard Mr.K.Thilageswaran, learned counsel appearing for the petitioners and Mr.V.Raghupathy, learned counsel appearing for the respondents.

3. The history of this case is that a suit was presented by the plaintiff therein before the City Civil Court at Bombay in O.S.No.2699 of 2015 seeking for recovery of a sum of Rs.16,25,000/-. It is the case of the plaintiff therein that between 6th February, 2008 to 2nd January, 2010, the husband of Kiran Puran Batavia, and the father of Nilesh Puran Batavia and Nina Naik Alias Nina Puran Batavia had borrowed a sum of Rs.13,00,000/-. Till 2013,



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Mr.Batavia had paid a sum of Rs.1,30,000/- together with interest. As the balance amount was not paid, the plaintiff therein presented the suit as aforesaid.

4. Despite the service of summons, the civil revision petitioners did not enter appearance before the City Civil Court at Bombay. That Court on being convinced with the records produced by the plaintiff therein, decreed the suit as prayed for as against the defendants 1 to 3/civil revision petitioners and directed them to pay a sum of Rs.16,25,000/- together with interest at the rate of 8% per annum.

5. It is not in dispute that as against the *ex parte* decree, a civil revision petition was presented by the civil revision petitioners herein before the High Court of Judicature at Bombay. This civil revision petition was numbered as Writ Petition (ST) No. 98180 of 2020. It came to be dismissed with cost of Rs.5,000/- by the Bombay High Court by order dated 22.06.2022.



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6. In order to put the decree into execution, the decree holder moved an application to transmit the decree to Chennai before the City Civil Court at Mumbai. Accordingly, the decree was transmitted to Chennai and E.P.No.419 of 2020 came to be taken on file by the XXV Assistant Judge, City Civil Court Chennai. This execution petition is to attach and sell the schedule mentioned property on default of payment of Rs.20,81,312.63/-. Notice was ordered to the Judgment Debtors. The Judgment Debtors pleaded, *inter alia*, that in terms of Section 6(4) of Hindu Succession (Amendment) Act, 2005, there is no question of pious obligation on them and hence, the properties cannot be attached for sold for the debt of the father.

7. The learned XXV Assistant Judge, City Civil Court at Chennai, came to a conclusion that as the ownership of the property had not been denied by the Judgment Debtors as not belonging to the deceased Puran N.Batavia, it ordered attachment. Against which, the present civil revision petition.

8. Mr.K.Thilageswaran, would vehemently contend that in terms of Section 6(4) of the Hindu Succession (Amendment) Act, 2005, no Court



should proceed against the son, grandson and great-grandson for recovery of any debt due from his father, grandfather or great-grandfather on the grounds of pious obligation. He would plead on account of the fact that the City Civil Court at Bombay had ignored this provision, the decree passed by the City Civil Court at Bombay is nullity and incapable of execution.

9. It is necessary to note that the pleading in the suit itself was that the civil revision petitioners had succeeded to the estate of deceased Puran N.Batavia. As per Section 52 of the Code of Civil Procedure, even if a decree passed against a deceased person, the decree can be executed with respect to the property, which has come into the hands of the legal representatives on account of the death of the original debtor.

10. Here is a case where the civil revision petitioners were given an opportunity to contest the proceedings before the City Civil Court at Bombay. They did not do so and suffered a decree, which is joint and several. They challenged it before the Bombay High Court and that also ended in dismissal. In other words, the decree has attained finality. *Res judicata* not only applies



between two separate proceedings but also applies to two different stages of the same proceeding. The Judgment Debtors had an opportunity to raise this plea before the City Civil Court, Bombay as well as Bombay High Court and they failed to do so. Therefore, they are barred from raising the plea before the Executing Court by virtue of “might or ought rule”. The Executing Court at Chennai is merely executing the decree as it stands. In so far as argument on Section 6(4) of the Hindu Succession (Amendment) Act, 2005, it applies only to matters relating to Joint Hindu Family and not to private assets of a individual.

11. To telescope Section 6(4) of the Hindu Succession (Amendment) Act, 2005 into Section 52 of the Code of Civil Procedure is certainly untenable. I do not find any error or illegality committed by the court below. The Executing Court has rightly rejected the contentions of the civil revision petitioners and ordered execution, and the same does not require any interference in the hands of this Court.

12. Accordingly, the Civil Revision Petition stands dismissed. The costs



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of this revision shall be a part of the cost in the execution. Consequently, the

connected civil miscellaneous petition is closed.

09.07.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

To

The XXV Assistant Judge,
City Civil Court, Chennai.



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V.LAKSHMINARAYANAN, J.

dm

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