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C.R.P.(NPD).No.2589 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD).No.2589 of 2024
and C.M.P.No.13589 of 2024

Ganesan

... Petitioner

VS

1.Hashmath Jabeen

2.Farooq Ahmed

3.Faseeha Farhteen

4.Naibunisa

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the order dated 26.03.2024 in E.A.No.5 of 2024 in E.P.No.27 of 2022 in R.C.O.P.No.1 of 2019 passed by the learned District Munsif Cum Judicial Magistrate at Thirukkalukundram.

For Petitioner : Mr.B.Sudhakar

ORDER

This Civil Revision Petition is at the instance of the Judgment Debtor.



C.R.P.(NPD).No.2589 of 2024

2. The landlord one Mohammed Mustafa filed R.C.O.P.No.1 of 2019

before the learned District Munsif-Cum-Judicial Magistrate, Thirukalukundram seeking eviction. He was successful in obtaining the order of eviction on 13.03.2020. Thereafter, to put the RCOP decree into execution, he presented E.P.No.27 of 2022. Unfortunately, he passed away pending the execution petition. Therefore, his legal heirs filed an application for substituting themselves in the place of Decree Holder. At that stage, the Judgment Debtor raised an objection that the mother of the deceased Mohammed Mustafa had not been included as a party to the proceeding. Therefore, the petition to substitute the legal heirs of the Decree Holder filed in E.A.No.4 of 2023 was withdrawn and a fresh application was filed in E.A.No.5 of 2024 to implead the legal heirs of the deceased Decree Holder. The said application was allowed by the learned District Munsif Cum Judicial Magistrate, at Thirukalukundram. Against which, the present civil revision petition has been filed.

3. Heard Mr.B.Sudhakar, learned counsel appearing for the petitioner.



C.R.P.(NPD).No.2589 of 2024

4. Mr.B.Sudhakar, would submit that as leave under Order 23 Rule 1 of the Code of Civil Procedure had not been obtained by the legal heirs of the Decree Holder, they cannot file a fresh application, as it is barred in terms of Section 141 of CPC r/w Order 23 Rule 1. He would further submit that the Judgment Debtor has initiated proceedings to set aside the decree passed by the learned Rent Controller. He would also state that the Judgment Debtor has moved an application to set aside the *ex parte* order passed in E.A.No.5 of 2024. Therefore, he pleads for allowing the present civil revision petition by setting aside the order dated 26.03.2024 in E.A.No.5 of 2024 in E.P.No.27 of 2022 in R.C.O.P.No.1 of 2019 passed by the learned District Munsif Cum Judicial Magistrate at Thirukkalukundram.

5. Taking the first argument of Mr.B.Sudhakar on Order 23 of CPC, I have to point out the procedure under Order 23 applies to suits while Section 141 makes applicable the procedure with regard to suits also to applications, but it is pertinent to point out that Section 141 applies, as far as it can be made applicable, to interlocutory proceedings. Here is a case where an application has been filed by the legal heirs of the Decree Holder for the



C.R.P.(NPD).No.2589 of 2024

purpose of continuation of the execution proceedings. The petition has been filed under Order 22 Rule 3 of the Code of Civil Procedure. In fact, in terms of Order 22 Rule 18 of the Code of Civil Procedure, Order 22 does not apply to execution. In other words, an execution proceeding can never abate. As long as the decree is within the period of limitation, it can be revived at any stage by any person representing the estate.

6. It was only on the objection of the Judgment Debtor that a petition was filed to implead all the legal heirs. Even that I would say is unnecessary because, even one legal representative in terms of the Code of Civil Procedure represents the interest of all legal representatives, unless and until it is proved that *inter se* there has been a collusion or fraud between the legal representatives. Fortunately, the situation does not arise in the present case. The learned Judge has specifically stated that the mother of the deceased 1st petitioner not having been included, the original application in E.A.No.4 of 2023 has been withdrawn. He has treated the application filed in E.A.No.5 of 2024 as an application in E.P.No.27 of 2022. In other words, it is treated as an original application in the execution petition.



C.R.P.(NPD).No.2589 of 2024

7. As rightly point out by the learned District Munsif that procedure is the handmaid of justice and on the basis of the procedural infraction, the decree which had been validly obtained cannot be nullified. I find no reasons to interfere with the order. As I am confirming the order passed by the learned District Munsif Cum Judicial Magistrate at Thirukkalukundram in E.A.No.5 of 2024 in E.P.No.27 of 2022 in R.C.O.P.No.1 of 2019, dated 26.03.2024 on merits and that too at the instance of the Judgment Debtor, the order of the Trial Judge merges with the order of this Court and consequently, there is no necessity for the learned Trial Judge to set aside the *ex parte* order. He is requested to close the said application filed by the judgment debtor.

8. Accordingly, the Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

19.07.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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C.R.P.(NPD).No.2589 of 2024

V.LAKSHMINARAYANAN, J.

dm

To

The District Munsif Cum Judicial Magistrate,
Thirukkalukundram.

C.R.P.(NPD).No.2589 of 2024

19.07.2024

6/6