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C.R.P. No. 2124 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 18.07.2024

ORDERS PRONOUNCED ON : 26.09.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

C.R.P. No. 2124 of 2020

and

C.M.P. No. 13454 of 2020

Mahamooda Begam

... Petitioner

Vs.

Ali Mohammed Sait (Since Deceased)

1.Fathima Bai

2.A. Mohammad Arif

3.A. Mohammed Illyas (Died)

4.E.Fasiha

5.R. Farhana

6.A. Mohamed Habeeb

7.A. Mohammed Adam

8.A. Shabir Ahmed

Abdul Subban (deceased)

Abdul Mazeed (deceased)

9.Mumtaz Bi

10.Musukan Begam

11.Mohamed Muniver (Minor)

12.Shabeed Ahmed (Minor)

13.Jakeer Hussain

14.Hajitha Be

15.Farah Sayeed



C.R.P. No. 2124 of 2022

16.I. Mohammed Zaid

17.I. Ayisha

... Respondents

[Respondents 15 to 17 brought on record as Lrs of the deceased
R3 viz., A.Mohammed Ilyas vide order dated 06.09.2022
in CMP.Nos.18693 and 18690 of 2021 in CRP.No.2124 of 2022]

Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the order dated 12.02.2020 passed in E.A. No. 4820 of 2018 in E.P. No. 255 of 2003 in O.S. No. 855 of 1972 made by the X Assistant Judge, City Civil Court, Chennai – 600 104.

For Petitioner : Mr. G. Mohammed Aseef
for Mr.I.Abrar Md. Abdullah
For Respondents : Mr. P.L. Narayanan, Senior Counsel
for Mr.V.Praveen Kumar, for R1 to 8, 15 to 17

ORDER

This Civil Revision Petition has been filed against the order dated 12.02.2020 passed in E.A. No. 4820 of 2018 in E.P. No. 255 of 2003 in O.S. No. 855 of 1972 on the file of X Assistant Judge, City Civil Court, Chennai.

2. The deceased decree holder filed E.P.No.255 of 2003 for executing the sale deed of the schedule mentioned property. The revision petitioner is the seventh judgment debtor in the E.P. No. 255 of 2003. Earlier, she has filed a petition under Section 47 of CPC and on dismissal of the same, C.R.P. No. 1174 of 2005 was preferred by her. The said CRP was dismissed as infructuous on 17.07.2017 on the ground that Execution Petition was closed. During the pendency of the Execution



Petition, Ali Mohammed Sait / decree holder expired on 21.05.2011. Then only the legal heirs of the decree holder came to know that the execution petition was closed on 20.12.2016. Therefore, they have filed E.A. No. 4820 of 2018 under Section 146 of CPC to implead themselves as legal heirs of the deceased decree holder and the same was allowed on 12.02.2020. Aggrieved by the same, the revision petitioner/Seventh judgment debtor filed the present Civil Revision Petition.

3. The learned counsel for the petitioner submits that the decree holder expired on 21.05.2011 and as such the respondents 1 to 8 herein ought to have filed the petition to implead them as legal heirs immediately on the death of the decree holder. Learned counsel further submits that the respondents have not impleaded themselves as parties to the Execution Petition, however, the present petition to implead themselves as legal heirs was filed belatedly. The Execution Petition was filed in the year 2003 during which the decree holder was alive and the Execution Petition was pending for 5 years 7 months before it was closed. The learned counsel further submits that the respondents 1 to 8 filed petition in E.A.SR.No.44120 of 2017 to condone the delay in impleading themselves as legal representatives and it is still pending. It is further submitted that the respondents 1 to 8 failed to show that they are legal heirs of deceased Ali Mohammed Sait by filing a legal heir certificate before the Execution Court though it is not enough to implead themselves in the Execution Petition, in view of Section 214 of Indian Succession Act and Section 48 of



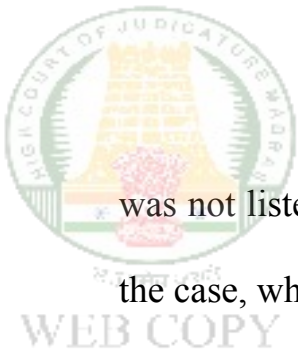
Mohammedan Law. Accordingly, the learned counsel for the petitioner prayed to allow the Civil Revision Petition.

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4. The learned counsel for the respondents submit that during the pendency of the Execution Petition, Ali Mohammed Sait expired on 21.05.2011. The respondents filed a memo to record the death of their father in the above said Civil Revision Petition. Thereafter, respondents 1 to 8 were impleaded in the Civil Revision Petition. The respondents were under the impression that further proceedings in the Execution Petition was stopped since the Civil Revision Petition is pending before this Court. Thus, it is submitted that the respondents did not file any petition to implead themselves as legal heirs in the Execution Petition.

5. Further, when the CRP.No.1174 of 2005 was listed before this Court on 17.07.2017, the petitioner herein had informed the Court that E.P. was closed on 20th December 2016 and hence, the said CRP was infructuous and the same was withdrawn. Then only, the respondents 1 to 8 herein came to know that E.P.No.255 of 2003 was closed on 20th December 2016.

6. The learned counsel for the respondents 1 to 8 further contends that E.P. Original papers were sent to the High Court and in the absence of original papers, on note papers, the order of closure of E.P. has been recorded. In the meantime, CRP



was not listed for quite a long time, therefore, the petitioners missed following up of the case, which is neither willful nor wanton but due to the said reasons.

7. The learned counsel for the respondents 1 to 8 further contends that the decree holder's valuable property interest will be lost and the hard earned judgment and decree will also be lost if the respondents 1 to 8 are not impleaded in the Execution Petition as legal heirs of the deceased decree holder. He further contends that no prejudice will be caused to the petitioner/7th judgment debtor if they are impleaded in the E.P.

8. Before the Execution Court, no witness was examined or documents marked by either of the parties. On hearing both sides and on consideration of the materials available on record, the Execution Court held that the provisions regarding abatement is not applicable to the Execution Petition as per the order 22 Rule 12 of CPC. As such there is no limitation to file a petition to implead legal heirs in execution proceedings. The Execution Court observed that when CRP No.1174 of 2005 is pending even before the expiry of the decree holder and the records of the Execution Petition also submitted before the High Court, no prudent person would expect that the E.P. Will be proceeded.

9. It is also observed that the Execution Petition is one for execution of sale



deed and the decree holder has been contesting the E.P. since 2003 and it is also pertinent to bear in mind that the suit is of the year 1972. The decree holder had all these years diligently followed the execution proceedings and when the records of the Execution Petition is submitted to the High Court, it is natural for the parties to the proceedings to believe that E.P. will not be proceeded during the pendency of the CRP. Accordingly, the Executing Court finds that there is no delay in filing the implead petition in E.P.

10. On careful perusal of the records, it appears that one Ali Mohammed Sait had filed a suit in OS.No.855 of 1973 for specific performance and the said suit is decreed in the second appeal. The decree holder filed E.P.No.255 of 2003 against the judgment debtors for executing the sale deed of the schedule mentioned property. The judgment debtors 3 to 6, 8 and 9 were set ex-parte. The 7th judgment debtor filed E.A.No.1060 of 2004 under Section 47 of C.P.C. for declaring the decree passed in the Second Appeal No.249 of 1983 as nullity and the same was dismissed on 03.03.2005. Against the said dismissal order, she filed CRP.No.1174 of 2005 before this Court. In view of the pendency of CRP, further proceedings in EP.No.255 of 2003 were stopped. After quite a long time, the CRP was listed on 11.07.2017 and the same was dismissed as infructuous on the information furnished before the Court that E.P. was closed on 20th December 2016. Then only the legal heirs of the decree holder came to know that the said E.P. was closed on 20th December 2012. During



the pendency of E.P., the decree holder expired on 21.05.2011. The legal heirs of the decree holder were impleaded in C.R.P.

11. The contention of the respondents 1 to 8 is that they were under the impression that further proceedings of the E.P. were stopped and pending for the reason that the E.P. original papers were sent to the High Court in the pending CRP proceedings. But immediately after they acquired knowledge about the closure of E.P., they filed a petition to implead them in the Execution Petition in E.A.No.4820 of 2018 to protect their interest as legal heirs of the original decree holders.

12. It is the further contention of the 7th judgment debtor/petitioner herein that the respondents had not taken appropriate action when E.P. was alive and before it was closed and filing of the petition to implead them in the closed E.P. is abuse of process of law. She further contends that the proposed parties are not entitled to file implead petition in dismissed EP.No.255 of 2003. Though several grounds were raised on behalf of the petitioner herein, her main contention is that the legal heirs of the decree holder are not entitled to implead in the closed execution proceedings.

13. In the case of *V.Uthirapathi vs. Ashrab Ali and others* reported in (1998) 3 SCC 148 relied by the learned counsel for the petitioner, the Apex Court while considering the order 22 Rule 12 of CPC has observed as under:



"Powers of Civil Court:

10. If during the pendency of a regular execution proceeding filed on the basis of a decree or order of a Civil Court, the decree holder or the judgment debtor dies and his legal representatives are not brought on record within ninety days, can the Civil Court dismiss the execution petition as abated?

11. Order 22 Rule 12 of the Code of Civil Procedure reads as follows:

"Order 22 Rule 12: Application of order to proceedings.-Nothing in Rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order."

12. In other words the normal principle arising in a suit - before the decree is passed - that the legal representatives are to be brought on record within a particular period and if not, the suit could abate, - is not applicable to cases of death of the decree holder or the judgment debtor in execution proceedings.

13. In Venkatachalam Chetti v. Ramaswami Servai, (ILR (1932) 55 Mad 352 : AIR (1932) Mad. 73 (FB)), a Full Bench of the Madras High Court has held that this rule enacts that the penalty of abatement shall not attach to execution proceedings. Mulla's Commentary on CPC (Vol.3) p. 2085 (15th Ed., 1997) refers to a large number of judgments of the High Courts and says:

"Rule 12 engrafts an exemption which provides that where a party to an execution proceedings dies during its pendency, provisions as to abatement do not apply. The rule is, therefore, for the



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benefit of the decree holder, for his heirs need not take steps for substitution under Rule 2 but may apply immediately or at any time while the proceeding is pending, to carry on the proceeding or they may file a fresh execution application."

14. In our opinion, the above statement of law in Mulla's Commentary on the CPC, correctly represents the legal position relating to the procedure to be adopted by the parties in execution proceedings and as to the powers of the Civil Court.

15. It is clear, therefore, that if after the filing of an execution petition in time, the decree holder dies and his legal representatives do not come on record - or the judgment debtor dies and his legal representatives are not brought on record, then there is no abatement of the execution petition. If there is no abatement, the position in the eye of law is that the execution petition remains pending on the file of the execution Court. If it remains pending and if no time limit is prescribed to bring the legal representatives on record in execution proceedings, it is open in case of death of the decree holder, for his legal representative to come on record at any time. The execution application cannot even be dismissed for default behind the back of the decree holder's legal representatives. In case of death of the judgment debtor, the decree holder could file an application to bring the legal representatives of the judgment debtor on record, at any time. Of course, in case of death of judgment-debtor, the Court can fix a reasonable time for the said purpose and if the decree holder does not file an application for the aforesaid purpose, the Court can dismiss the execution petition for



default. But in any event the execution petition cannot be dismissed as abated. Alternatively, it is also open to the decree holder's legal representatives, to file a fresh execution petition in case of death of the decree holder; or, in case of death of the judgment debtor, the decree holder can file a fresh execution petition impleading the legal representatives of the judgment debtor; such a fresh execution petition, if filed, is, in law, only a continuation of the pending execution petition - the one which was filed in time by the decree holder initially. This is the position under the Code of Civil Procedure.”

14. The learned counsel for the petitioner also relied on the judgment of the Apex Court in ***Damodaran Pillai and Others vs. South Indian Bank Ltd.*** reported in (2005) 7 SCC 300. However, the said judgment is not applicable to the facts and circumstances of the present case.

15. The learned counsel for the respondent relied on the decision of ***Pentapati Chinna Venkanna and Others vs. Pentapati Bengararaju and others*** reported in MANU/SC/0001/1964 of the Apex Court, wherein it is held as extracted hereunder:

“8. In this case, as we have pointed out, the parties are substantially the same in both the proceedings, and the decree-holders are only proceeding against properties included in the previous application. It cannot, therefore, be treated as a fresh application within the meaning of s. 48 of the Code. It is only an application to continue E.P. No. 13 of



1939 which is pending on the file of the executing court.

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9. That apart, the decree-holders filed E.A. No. 142 of 1952 in E.P. No. 13 of 1939 expressly asking for the reopening of the said execution petition and for proceeding with it. As we have held that the earlier execution petition is still pending on the file of the court, the executing court will be well within its rights in proceeding on the basis of the earlier execution petition even without a new petition.”

16. As seen from the order passed by the Execution Court while allowing to implead the legal heirs of the decree holder in Execution Petition No.255 of 2003 and the reliances placed by the learned counsel, there is no dispute with regard to the facts of the case and the only issue to be considered herein is whether the legal heirs of the decree holder can be impleaded in the execution proceedings. In the Judgment of the Apex Court in ***V.Uthirapathi*** cited supra, the Apex Court categorically held that if after filing of execution petition in time, the decree holder dies, and his legal representatives do not come on record, or the judgment debtor dies and his legal representatives are not brought on record, then there is no abatement of the execution petition. If there is no abatement, the position in the eye of law is that the execution petition remains pending on the file of the Execution Court. If it remains pending and if no time limit is prescribed to bring LRs on record in the Execution Petition, it is open in the case of the death of the decree holder, for his legal representatives to come on record at any time.



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17. The Apex Court clearly held that the Execution Petition cannot even be dismissed for default behind the back of decree holder's legal representatives. In the light of the clear proposition of law laid down by the Apex Court as stated above, in the considered opinion of this Court that finding of the Execution Court that the petitioners are entitled to implead themselves as legal heirs of the deceased decree holder in the Execution Petition and also entitled to perform the acts of the decree holder in proceedings with the Execution Petition, is in accordance with law and according to the settled proposition of law. The Execution Court while allowing the petition filed under Section 146 of C.P.C. to implead legal heirs of the deceased decree holder in the execution proceedings has considered all aspects and gave specific finding on every ground raised by the respondents and passed a reasoned order and as such this Court is not inclined to interfere in the same. Accordingly, this court upholds the order dated 12.02.2020 passed in E.A. No. 4820 of 2018 in E.P. No. 255 of 2003 in O.S. No. 855 of 1972 made by the X Assistant Judge, City Civil Court, Chennai.

18. Accordingly, the Civil Revision Petition is dismissed.

No costs.

Consequently, connected miscellaneous petition is closed.



C.R.P. No. 2124 of 2020

19. The X Assistant Judge, City Civil Court, Chennai, shall conclude the proceedings in E.P.No.255 of 2003 in O.S. No. 855 of 1972 as expeditiously as possible.

26.09.2024

Index :Yes/No
Neutral Citation :Yes/No
AT / pvs

To
The X Assistant Judge, City Civil Court, Chennai – 600 104.



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C.R.P. No. 2124 of 2020

BATTU DEVANAND, J.

pvs

Pre-delivery Order made in
C.R.P. No. 2124 of 2020 and
C.M.P. No. 13454 of 2020

26.09.2024