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C.R.P.(PD).No. 3364 & 3365 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.08.2024

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THE HONOURABLE Mr. JUSTICE

V.LAKSHMINARAYANAN

C.R.P.(PD).Nos. 3364 & 3365 of 2024

&

C.M.P.Nos. 18070 & 18075 of 2024

Lalitha

...Petitioner in both petitions

Vs.

1. R.Deepa

2.S.Anandan
petitions

...Respondents in both

Prayer in CRP/3364/2024: Civil Revision Petition is filed under Article 227 of the Constitution of India against the impugned order dated 07.06.2024 by the learned Subordinate Judge, Gudiyatham, Vellore, I.A.No.2 of 2023 in O.S.No.50 of 2023.



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Prayer in CRP/3365/2024: Civil Revision Petition is filed under Article 227 of the Constitution of India against the impugned order dated 07.06.2024 by the learned Subordinate Judge, Gudiyatham, Vellore, I.A.No.2 of 2023 in O.S.No.51 of 2023.

For Petitioner : Mr. S.Sandesh Saravanan

ORDER

The above Civil Revision Petitions arise against the dismissal of the petitions filed for rejection of the complaints in O.S.Nos. 50 & 51 of 2023.

2. The suits have been presented by the 2nd respondent herein for a recovery of a sum of Rs.9,06,900/-, in each suit.



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3. The case of the plaintiff is that one Ramesh Babu had borrowed a sum of Rs.6,00,000/- from him on 06.04.2020. Within a short period from the time of borrowal, on 07.06.2020, the said Ramesh Babu passed away. He left behind as his legal heirs one Deepa, his wife and his mother, Lalitha. Arraying them as defendants, the plaintiff presented the suits for recovery of money.

4. The plaintiff, along with the suits, took out an application for attachment of the properties. On being served with the summons, the civil revision petitioner went on record by way of a written statement. Thereafter, she took out an application under Order VII Rule 11 of the Code of Civil Procedure. The plea of the civil revision petitioner is that the deceased Ramesh Babu had never executed a promissory note in favour of the plaintiff / respondent. She would also plead that there is no cause of action for filing the suits as the present defendants had not borrowed any money from the plaintiff.



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5. The learned Judge received this application in I.A.No.2 of 2023 and directed the plaintiff to file a counter. The plaintiff filed a counter specifically pleading that the amount was outstanding on account of the loan that had been taken by the son of the civil revision petitioner and that, by virtue of principles of succession, the civil revision petitioner is liable to pay the amount.

6. The learned Judge after consideration of these facts came to the conclusion that the applications required to be dismissed and accordingly dismissed it. Challenging the same, the present Civil Revision Petitions are filed before this Court.

7. Heard Mr. S.Sandesh Saravanan for the civil revision petitioner.

8. Mr. S.Sandesh Saravanan, would submit that in terms of Section 52 of the Code of Civil Procedure, a legal representative of the



party is liable only to the extent to which the property comes to his or her hands. He would submit that the plaintiff has nowhere submitted that properties had been left behind by the said Ramesh Babu came to the hands of the defendants and therefore the suit has no cause of action. His second plea is that the remedy for a person who is alleged to have given a loan to a deceased person is only by way of suit for administration and so a regular civil suit is not maintainable.

9. He would also state that the defendants have to be legal representatives who are appointed by the Court and legal heirs are not legal representatives. In support of this contention, he would rely upon the Judgement reported in ***Govindammal and another Vs. Bhuvaneswari Financing Corporation - AIR 2002 Madras 296.***

10. In so far as plea for rejection of the plaint is concerned, the Court is concerned only with the allegations made in the plaint and not the defense taken by the defendants. Paragraph No.2 of the plaint



specifically pleads that the said Ramesh Babu had left behind as his legal heirs, his mother and his wife, who are the defendants. The plaintiff would also state that the estate of Ramesh Babu is in possession and enjoyment of the defendants and therefore they are liable to pay suit amount. The plaintiff also states that the plaintiff had sent a lawyer's notice on 24.01.2022, to which the 2nd defendant issued a reply saying that she is not responsible to honour the pro note executed by the said Ramesh Babu. For a suit on demand pro note, there should be a demand and refusal. This cause of action of the plaintiff have to be proved by the plaintiff in order to succeed in the proceedings.

11. A reading of paragraph Nos.2 to 4 and 7, makes it clear that Ramesh Babu had executed a document and had passed away within 2 months thereof and when a demand was made to the legal heirs, they refused the same. Hence, there is a cause of action.



12. In so far as the argument of Mr.Sandesh Saravanan is concerned that legal heirs are not legal representatives, I am not with him. This is for the simple reason that, as to who is a legal representative is already defined by the Code of Civil Procedure. Under Section 2 (11) of the Code of Civil Procedure, any person who represents the estate of the deceased is treated as legal representative. This not only includes legal heirs but also includes intermeddlers of the property of the deceased.

13. As pointed above in paragraph No.2 of the plaint, the plaintiff has specifically pleaded that the defendants are in possession of the estate of the deceased Ramesh Babu. Therefore, they have been impleaded not only as the legal heirs but also as the legal representatives of the deceased Ramesh Babu.

14. With regard to the argument that only an administration suit that can be filed and not a regular suit for recovery of money is



concerned, the learned counsel is not in a position to point out any provisions of law under which a regular suit for recovery of money on the basis of pro note is barred. In order to invoke the provisions of Order VII Rule 11 of the Code of Civil Procedure, there should be a specific or implied bar. In the absence of such bar, any Civil Court of competent jurisdiction is entitled to invoke the powers vested in it under Section 9 of the Code of Civil Procedure.

15. Finally, with respect to the arguments of Mr. Sandesh Saravanan that Section 52 bars the present suit, a careful perusal of Section 52 of the Code of Civil Procedure would make it clear that it applies to Execution. An Executing Court cannot execute a decree passed against a person or his / her properties, who is arrayed as a legal representative. A legal representative is answerable only to the extent, the properties of a deceased comes to his / her hands. We are still at the stage of pre decree and Section 52 applies post decree.



Therefore, the said section is inapplicable.

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16. Turning to the Judgement reported in ***Govindammal and another Vs. Bhuvaneswari Financing Corporation - AIR 2002 Madras 296***, a perusal of the case would show that during the course of evidence, the plaintiff had not proved that the property involved in a dispute belonged to original debtor, one Ethirajulu Naidu. In fact, paragraph No.9 of the said Judgement shows that there were no pleadings of the plaintiff showing that Ethirajulu Naidu's properties was succeeded by his wife and children.

17. In the present case, I have pointed out that there is a specific pleading in paragraph No.2 of the plaint that the defendants have succeeded to the estate of late Ramesh Babu. Therefore, factually this Judgement does not apply to the facts of this case.

18. In the light of the above discussion, I am not inclined to



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consider the revisions. The Civil Revision Petitions are dismissed.

Consequently, the connected miscellaneous petitions are closed. No

costs.

19.08.2024

Index : Yes/No

Internet : Yes/No

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To

The Subordinate Judge,
Gudiyatham,
Vellore.



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V.LAKSHMINARAYANAN, J.

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