



C.R.P.(NPD) No.4784 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2024

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THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No.4784 of 2024
and C.M.P.No.26774 of 2024

Velammal (alias) Murali ... Petitioner/3rd Party/Claimant/ Petitioner

-VS-

1. Angalammal ... Respondent/Decree Holder
/Plaintiff/1st Respondent

2. N.Anandan

3. N.Annamalai ... Respondents/Judgment Debtors
/Defendants/Respondents 2 & 3

Prayer: Civil Revision Petition filed under Section 115 of C.P.C. to set aside the order made in E.A.No.2 of 2024 in E.P.No.10 of 2021 in O.S.No.178 of 1992 dated 28.10.2024 by the learned Judicial Magistrate-cum-District Munsif, Pallipattu and dismiss the Execution Petition.

For Petitioner : Mr.M.Venkatakrishnan

For R1 : Mr.M.Venkadesh Kumar

ORDER

Aggrieved by the order dated 28.10.2024 passed under Section



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47 of CPC by the Judicial Magistrate-cum-District Munsif, Pallipattu in E.A.No.2 of 2024 in E.P.No.10 of 2021 in O.S.No.178 of 1992, the present Civil Revision Petition has been filed.

Brief Background of the case in Nutshell:

2. A suit in O.S.No.178 of 1993 was filed by the Plaintiff/1st respondent herein for recovery of possession of the suit property and in the suit, it was averred that the Plaintiff is the absolute owner of the property by virtue of sale deed dated 24.08.1963. Ever since the date of purchase, the plaintiff was in possession of the property and subsequently, the 1st defendant / brother of the plaintiff's husband had taken the suit property for lease for a monthly rent of Rs.3/- and executed a registered lease Deed.

3. According to the plaintiff, after expiry of the lease deed, the said lease was terminated by Notice dated 06.03.1992. As the 1st defendant refused to surrender the possession, the suit came to be filed.

4. The stand of the 1st Defendant is that in order to save the



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joint family properties from the creditors for the debts, a sale deed was executed in favour of the plaintiff and hence, the sale deed was sham and nominal. Though the suit was decreed in favour of the plaintiff, on appeal filed in A.S.No.130 of 2001, the decree and judgment of the Trial Court was set aside. Thereafter, Second Appeal in S.A.No.1109 of 2005 was filed by the Decree Holder, which stood allowed on 19.05.2020 and thereby the decree and judgment of the Trial Court was restored. The Review Application filed by the defendants in Rev.Appl.No.104 of 2022 was also dismissed on 26.09.2023.

5. Pursuant to the decree and judgment, an Execution Petition has been filed by the Decree Holder in E.P.No.10 of 2021 and at that stage, an application under Section 47 of CPC has been filed by one Velammal @ Murali, who is the daughter of the original judgment debtor/1st defendant, stating that the 1st Appellate Court set aside the decree and judgment on 14.10.2003 and thereafter, the 1st defendant had executed a Settlement Deed in her favour on 16.06.2004, viz., before initiation of second appeal and that in the Second Appeal, she had not been impleaded as one of the legalheirs,



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whereas the Trial Court had not considered this aspect and hence, the instant Civil Revision Petition has been filed, questioning the order of the Trial Court dated 28.10.2024.

6. Learned counsel for the revision petitioner submitted that the petitioner, who is one of the legal heirs has not been brought on record in the second appeal and therefore, the judgment is not binding on her and the decree passed in the second appeal attains nullity in the eye of law, as the revision petitioner, being a settlee of her father, is entitled to succeed the estate of her father. Learned counsel for the revision petitioner, in support of his submission, relied upon a judgment of the Supreme Court in the case of **Gurnam Singh (D) Through Lrs vs. Gurbachan Kaur (D) by LRs.**, reported in **2017 (13) SCC 414**.

7. Per contra, learned counsel for the plaintiff/1st respondent herein contended that the so-called settlement deed was executed by the 1st defendant on 16.06.2004 and any settlement during the pendency of the proceedings is not valid and is subject to the result of the suit. He further



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contended that the judgment debtor's estate has been sufficiently represented through legal heirs, namely, sons and it is not necessary to include all the legal representatives in terms of Order 22 Rule 3 of CPC.

8. I have perused the entire material facts available on record coupled with the contentions raised on either side.

9. The foremost submission of the learned counsel for the revision petitioner is that the revision petitioner has not been added in the second appeal and therefore, the judgment is nullity in the eye of law. On a careful perusal of the judgment referred to by the revision petitioner, it is seen that in the said case, none of the legal representatives, of whom, the right to sue has been devolved, had been brought on record and the decree and judgment had been passed against a dead person. Under the said context, the Apex Court held that the decree passed against a dead person is a nullity.

10. In this case, two sons of the Judgment Debtor, who were



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already parties to the suit, had been recognized as legal representatives of the deceased defendant. It is relevant to point out that when some of the legal representatives are already before the Court as defendants, entire suit will not abate, even though there is no strict compliance of Order 22 Rule 3 & 4. What is required to be seen is as to whether the estate of the Judgment Debtor has been properly represented or not and in the case on hand, sons have sufficiently represented the estate of the deceased. The Apex Court in the case of *Harihar Prasad Singh vs. Balmiki Prasad Singh*, reported in *AIR 1975 SC 733* held that if the estate of the deceased was fully represented by the heirs, who had been brought on the record, any decision rendered will bind not only on the contested legal heirs, but also on the legal heirs, who are not arrayed as a party.

11. In the considered opinion of this Court, unless a fraud or collusion is established, mere non-inclusion of one of the legal heirs will not affect the decree in entirety, as the judgment debtor's estate has been sufficiently represented through some of the legal heirs and therefore, there shall not be any abatement in such case. Moreover, the revision petitioner



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claims rights on the basis of the settlement deed said to have been executed on 16.06.2004 during pendency of the suit, namely, Second Appeal. It is pertinent to mention here that if any transaction is effected during pendency of a suit, such transaction is always subject to the result of the said suit and is hit by *lis pendens* as per Section 52 of the Transfer of Property Act, 1882. When the estate of the deceased has been properly represented, the revision petitioner, on the basis of the settlement deed that came into existence during the pendency of the suit, cannot now complain that the suit has been abated and decree is a nullity.

12. Finding no force or merits in the contention made by the revision petitioner, this Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No
Internet: Yes/No
Speaking Order/Non Speaking Order
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