



C.R.P.(MD)No.93 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.10.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)No.93 of 2024

and

C.M.P.(MD)No.449 of 2024

Bharath Petroleum Corporation Limited,
represented by its Senior Manager,
having Office at No.1, Ranganathan Gardens off,
11th Main Road, Anna Nagar,
Chennai-40,
presently represented by its Territory Manager (Retail),
BG Goods Shed Road, Thachanallur,
Tirunelveli-627 358.

... Petitioner

Vs.

1.Jeyapaul
2.Jayaseelan
3Jeyalakshmi
4.Rajalakshmi
5.Shantha
6.Kumuthini

... Respondents

(All respondents represented by their Power Agent
Chittramabala Natarajan, Chartered Accountant.)



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PRAYER : Civil Revision Petition is filed under Section 115 of C.P.C., against the order, dated 11.09.2023, passed in E.A.No.3 of 2022 in E.P.No.64 of 2020 in O.S.No.93 of 2006 on the file of the Principal District Munsif Court, Tirunelveli.

For Petitioner : Mr.G.Raghuvaran Gopalan
For Respondents : Mr.S.Hameed Ismail

ORDER

The present civil revision petition is filed by the defendant / Bharath Petroleum Corporation Limited (in short BPCL) against the order, dated 11.09.2023, passed in E.A.No.3 of 2022 in E.P.No.64 of 2020 in O.S.No.93 of 2006 on the file of the Principal District Munsif Court, Tirunelveli.

2. The plaintiff in the suit in the respondents herein and the defendant in the suit is the revision petitioner. The suit was filed by the respondents herein praying to directing the defendant BPCL to hand over the vacant possession and pay Rs. 3,675/- as damages for the period from 01.06.2003 to 29.04.2005 and for future damages. The suit was decreed directing the defendant BPCL to vacate the suit property within a period of four months and also directing to pay Rs.4,025/- as



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damages for the period from 01.06.2003 to 29.04.2005 and also for future damages until the delivery of the suit schedule property. Aggrieved over the defendant BPCL had preferred an appeal in A.S.No.73 of 2012 and the same was dismissed with cost.

3. Thereafter the plaintiff had preferred E.P.No.64 of 2020 to execute the decree passed in O.S.No.93 of 2006. Pending execution proceedings, the plaintiff preferred E.A.No.3 of 2022 in the execution proceedings for appointment of Advocate Commissioner to ascertain the mesne profits for the period from 01.05.2005 to 13.08.2021. The same was resisted by the defendant as time barred and also stated that the defendant cannot be considered as a trespasser and by raising various other issues. After hearing the same, the application for appointing Advocate Commissioner was allowed and an Advocate Commissioner was appointed. Aggrieved over the same, the present civil revision petition is filed.

4. Pending Civil Revision Petition, the Court had referred the case for mediation. In the mediation, the petitioner and one Pratheep Raj representing the



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plaintiffs had reported that tentatively they have agreed for settlement for Rs. 1,50,00,000/- at Chennai Head Office. It was also recorded that the said Pratheep Raj may amend the petition by including him as one of the plaintiffs in the suit and one of the respondents in the present revision petition. Based on these negotiations, the parties agreed before the Court to settle the issue by paying Rs. 1,50,00,000/- to the plaintiffs.

5. It is seen that the said Pratheep Raj was not a party in any proceedings. It is contended by the plaintiffs that the plaintiffs 3 to 6 namely, Jeyalakshmi, Rajalakshmi, Shantha and Kumuthini who are the sisters of plaintiffs 1 and 2 had already executed a release deed, dated 26.08.2008 registered as Document No.430 of 2008, Sub Registrar Office, Udangudi, thereby, released their interest in the present proceedings in favour of the plaintiffs 1 and 2.

6. Thereafter the 2nd plaintiff died on 19.03.2016 and his legal heirs are Mrs.Latha Thurairaj Jeyaseelan (wife), Ms.Divya Jeyaseelan (daughter) and Mr.Gautam Raj (son). The said Latha Thurairaj Jeyaseelan, Divya Jeyaseelan and



Gautam Raj are being represented by the said Pratheep Raj as power agent, since the said parties had executed the power of attorney deed dated 08.08.2024 in favour of Pratheep Raj.

7. Thereafter, the 1st plaintiff died on 02.05.2018 and his legal heirs are Mrs.Rajini Jeyapal (wife), Mr.Pratheep Raj (son), Ms. Bavani Sinduja (daughter). The said Rajini Jeyapal and Bavani Sinduja had executed a release deed, thereby, releasing their share in favour of Pratheep Raj (son) through registered release deed, dated 19.09.2023, registered in Document No.8420 of 2023.

8. The said Pratheep Raj was directed to file an “undertaking affidavit” to indemnity in case if there is any claim or issues that would arises in future. Hence the said Pratheep Raj has filed undertaking affidavit, dated 19.10.2024, before this Court and he had also appeared before this Court in person.



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9. However, it is seen that in none of the proceedings the said Pratheep Raj was a party. Infact the Learned Counsel appearing for the revision petitioner BPCL vehemently objected for entertaining the plea of the said Prateep Raj, who claimed himself as a representative of the original plaintiffs.

10. Originally there are six plaintiffs namely Jeyapaul, Jayaseelan, Jeyalakshmi, Rajalakshmi, Shantha, Kumuthini. The said Jeyalakshmi, Rajalakshmi, Shantha, Kumuthini had executed release deed dated 26.08.2008 registered as Document No.430 of 2008. The judgment in the suit was passed on 15.03.2012. When the release deed was executed in the year 2008 itself, the same was not brought to the knowledge of the Court. After the released deed the plaintiffs 1 and 2, namely Jeyapaul and Jayaseelan along was contesting the suit and they alone are entitled to the damages amount. The defendant BPCL had filed Appeal Suit in A.S.No.73 of 2012 and the same was dismissed on 23.03.2018. In the appeal proceeding also the plaintiffs had not whispered about the release deed dated 26.08.2008. Furthermore, pending Appeal Suit the 2nd plaintiff died on 18.03.2016 and the appeal judgment was on 23.03.2018. Even in the Appeal Suit



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the plaintiffs never informed about the death of the 2nd plaintiff and his legal heirs were not impleaded. Finally, on 02.05.2018 the 1st plaintiff also died and he died after the judgment of the Appeal Suit, just two months after the judgment. In effect none of the plaintiffs are available and the situation prior to EP proceeding was that the BPCL was litigating against none. Thereafter, the EP proceedings was filed by one Chitrambala Natarajan, who is a power of attorney holder and contested the case. In the EP proceedings also the above facts of release deed, death of 1st and 2nd plaintiffs were not intimated and their legal heirs were not impleaded. Now, suddenly one Prateep Raj is claiming that he is the legal heir of the 1st plaintiff Jayapaul and contesting the case. And he is also claiming that he is representing the 2nd plaintiff Jayaseelan's legal heirs through power of attorney. Infact, he had negotiated with the defendant BPCL and the parties had arrived at settlement, wherein the damages had been quantified. But the fact remains the said Prateep Raj was not a party in any of the proceedings, hence it is necessary that appropriate amendments ought to be carried out. Hence the case ought to be remitted back to the Appellate Court to carry out necessary amendments.



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11. The revision petitioner further submitted that the mesne profits arrived at as per their formula is only Rs.1,37,00,000/-. But, in mediation the amount was agreed by the BPCL and the respondents was Rs.1,50,00,000/-, which is subject to the approval of the Board of BPCL.

12. For the reasons stated supra, this Court is issuing the following directions:

- a. The defendant Bharath Petroleum Corporation Limited is directed to deposit Rs.1,37,00,000/- in E.P.No.64 of 2020 in O.S.No.93 of 2006 on the file of the Principal District Munsif Court, Tirunelveli within a period of four weeks from the date of receipt of this order, which is the amount arrived as per their own formula.
- b. After the approval of the Board, the balance Rs.13,00,000/- shall be deposited within a period of eight weeks from the date of receipt of this order.



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- c. The said Prateep Raj representing the legal heirs of Jayapaul through release deed and representing legal heirs of Jayaseelan through power of attorney is directed to file interlocutory application in Appeal Suit in A.S.No.73 of 2012 on the file of Principal Sub Court, Tirunelveli to record the release deed dated 26.08.2008 registered as Document No.430 of 2008, Sub Registrar Office, Udangudi, to implead the legal heirs of 1st plaintiff Jayapaul and 2nd plaintiff Jayaseelan, to record the release deed dated 19.09.2023, registered in Document No.8420 of 2023 and to record the Power of Attorney dated 19.10.2024. And the Appellate Court shall consider the same and pass appropriate orders as per law on or before 31.03.2025.
- d. The said Prateep Raj representing the legal heirs of Jayapaul through release deed and representing legal heirs of Jayaseelan through power of attorney is directed to file Execution Application in E.P.No.64 of 2020 on the file of Principal District



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Munsif Court, Tirunelveli to record the release deed dated 26.08.2008 registered as Document No.430 of 2008, Sub Registrar Office, Udangudi, to implead the legal heirs of 1st plaintiff Jayapaul and 2nd plaintiff Jayaseelan, to record the release deed dated 19.09.2023, registered in Document No.8420 of 2023 and to record the Power of Attorney dated 19.10.2024. And the EP Court shall consider the same and pass appropriate orders as per law on or before 31.03.2025.

13. If there is any difficulty in carrying out the above directions, the parties are at liberty to approach this Court.

14. With the above said observations and directions, the civil revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

22.10.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes

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Note: Issue order copy on 25.10.2024.



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To

- 1.Principal District Munsif Court,
Tirunelveli.
- 2.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.
- 3.Principal Sub Court,
Tirunelveli.



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S.SRIMATHY, J.

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