



CRP(MD).No.1192 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 01.08.2024

CORAM

THE HON'BLE MR JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P(MD)No.1192 of 2024

and

C.M.P(MD).No.6815 of 2024

Radhika

... Petitioner

-Vs-

Srinivasa Iyengar (died)

Lakshmi Srinivasan (died)

Kesavan (died)

Pooma (died)

1.Sabitha

W/o.Rengarajan

2.Sridhar

3.Ravi

4.Kala

5.Sundar

6.Sabitha

W/o.Sridharan

... Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order dated 28.02.2023 in E.A.No.1 of 2022 in E.P.No.79 of 2005 in O.S.No.319 of 2014 on the file of the First Additional District Judge(PCR), Tiruchirappalli.



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For Petitioner : Mr.V.R.Shanmuganathan

For Respondents : Mr.J.Anandkumar

ORDER

The journey of this petitioner is started in the year 1989. After the suit was allowed to be tried as indigent person, the suit was finally numbered as O.S.No.319 of 2004. The suit was filed against one Srinivasa Iyengar, who died pending the suit and his legal heirs are brought on record. The prayer in the suit was for declaration of the title of the plaintiff and for recovery of possession. Even though the defendants filed written statement, they remained *ex-parte* and on 11.10.2004, an *ex-parte* decree was granted in favour of the petitioner herein. Thereafter, the petitioner filed E.P.No.79 of 2005 for execution of the decree. Pending the execution petition, the judgment-debtor filed I.A.No.57 of 2014 to condone the delay of 3040 days in re-presenting the application in I.A.No.137 of 2014, which was filed to condone the delay of 168 days in filing the application in I.A.No.221 of 2014 to set aside the *ex-parte* decree. The said applications were allowed one after the other on 13.06.2014, 27.08.2014 and 20.11.2014 by setting the decree-holder *ex-parte*. Thereafter, the decree-



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holder filed I.A.Nos.279, 280 and 281 of 2015 to set aside the *ex-parte* orders. All the above three applications were allowed on 09.04.2019 and consequently, those applications got restored to file. Therefore, the trial Court took up I.A.No.57/ of 2014 being the petition to condone the delay in re-presentation. Since there was no representation on behalf of the judgment-debtor, the said petition was dismissed for default on 15.09.2022. In the interregnum, since the *ex-parte* applications were pending, the execution petition was closed on 28.10.2009. Therefore, since the *ex-parte* decree has now become final, since 12 years of time has passed by from the date of *ex-parte* decree, the E.P.No.79 of 2005 has since become the limitation EP, the petitioner has filed I.A.No.1 of 2022 to re-open and revive the said execution petition, by the order impugned in the civil revision petition dated 28.02.2023, the same is dismissed by the trial Court.

2. Mr.V.R.Shanmuganathan, the learned counsel appearing on behalf of the petitioner would submit that the trial Court dismissed the application on two grounds. Firstly, it has held that it is beyond a period of 12 years and therefore, the execution petition is dismissed. He would submit that



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the period of 12 years have to be ascertained only after the *ex-parte* decree got revived, after the dismissal of the applications filed by the judgment-debtor and the said period is not excluded and therefore, the trial Court erred regarding the same. The second ground, on which the trial Court has dismissed, is that the decree has to be amended, since it is filed by the petitioner, who was not shown as the plaintiff. The learned counsel would submit that even the petitioner was the plaintiff, he was shown as the minor represented by the guardian. Now, since he has become major, he himself can file the execution petition.

3. The said submissions are opposed by the learned counsel appearing on behalf of the respondents. He would submit that if at this time the execution petition is ordered to be proceeded with, the defendants would be put to grave prejudice.

4. I have considered the rival submissions made on either side and perused the material records of the case.



5. I am fully in agreement with Mr.V.R.Shanmuganathan, the learned counsel appearing on behalf of the petitioner. It can be seen that the *ex-parte* decree though was in force between 2004-2014, the same was set aside and therefore, only after the revival of the decree with effect from 09.04.2019, thereafter, it became final. In that view of the matter, finding of the trial Court that the execution petition cannot be revived after a period of 12 years is erroneous in law. It is trite that when the execution petition becomes a limitation Execution Petition, the plaintiff is entitled to continue the same as otherwise the decree will become a piece of paper. Therefore, the petition in E.A.No.1 of 2022 deserves to be allowed. As rightly pointed out by the learned counsel when the minor plaintiff has become a major after passing of the decree, it is not necessary that the decree need be amended and she herself can pursue the execution petition.

6. For all the above reasons, the Civil Revision Petition stands allowed on the following terms:

(i)The impugned order dated 28.02.2023 made in I.A.No.1 of 2022 in E.P.No.79 of 2005 in O.S.No.319 of 2014 shall stand set aside and consequently, E.A.No.1 of 2022 in E.P.No.79 of 2005 shall stand allowed



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and E.P.No.79 of 2005 shall stand revived to the file of the I Additional District Judge (PCR), Tiruchirappalli and the trial Court shall proceed with the same in accordance with law.

7. Considering the fact that the suit is initiated by the decree-holder in the year 1989, 35 years have since gone by, the trial Court is requested to take up the execution petition as expeditiously as possible on day-to-day basis and proceed with the matter further.

No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes/ No
Rmk

To
1.The First Additional District Judge(PCR), Tiruchirappalli.



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D.BHARATHA CHAKRAVARTHY, J.

Rmk

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