



CRP.No.57 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 19.06.2025

Order pronounced on : 27.06.2025

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.57 of 2025
& CMP.No.517 of 2025

B.Kumaresan

..Petitioner

Vs.

1.P.Ravi
2.Sangu Bai
3.Vanathi Devi
4.Yamuna Devi

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to call for records of Lower Court and set aside the order dated 25.09.2024 passed in E.P.No.215 of 2018 in O.S.No.8 of 2013 on the file of the Principal Sub-Court, Kanchipuram.

For Petitioner : Mr.R.Sivakumar

For Respondents : Mr.J.Ram



CRP.No.57 of 2025

ORDER

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The petitioner is the judgment debtor No.5 in E.P.No.215 of 2018. The petitioner challenges the order of the Execution Court dated 25.09.2024, ordering attachment of the property of the petitioner.

2.I have heard Mr.R.Sivakumar, learned counsel for the petitioner and Mr.J.Ram, learned counsel for the respondents.

3.Mr.R.Sivakumar, learned counsel for the petitioner would submit that the suit was filed by the 1st respondent/decreed holder for recovery of a sum of Rs.5,07,800/- (Rupees Five Lakhs Seven Thousand and Eight Hundred only), together with interest on the principal amount of Rs.3,00,000/- (Rupees Three lakhs only).

4.In O.S.No.8 of 2013 before the Subordinate Court, Kancheepuram, the sole defendant, Mr.Balasundaram did not file his written statement and hence, he was set ex-parte on 18.06.2014. However, soon thereafter on 28.06.2014, the sole defendant died. It is alleged that the decree holder was aware of the death of the sole defendant and that the decree holder did not bring it to the notice of



the Court or the legal heirs of the deceased defendant and proceeded to get an ex-parte decree, which is sought to be put to execution. He would further submit that Order XXII Rule 4 of CPC mandates that in the event of death of the sole defendant, the plaintiff has to get an exemption from bringing on record the legal heirs and pointing out to the procedure adopted by the plaintiff, the learned counsel for the petitioner would further submit that no such exemption was also obtained and hence, the decree is a nullity and cannot be enforced before a Court of law. He would further submit that the consequential order of attachment of the property passed by the Execution Court is thus wholly unsustainable.

5.The learned counsel for the petitioner would place reliance on the decision of this Court in *B.Venkatesan Vs. S.Peter Devadass (Deceased) and Others* in *CRP.No.1131 of 2023 dated 05.11.2024* and the judgment of the Hon'ble Supreme Court in *T.Gnanavel Vs. T.S.Kanagaraj and Another* reported in *(2009) 14 SCC 294*, in support of his contentions.

6.The learned counsel for the petitioner would therefore submit that the Execution Court ought not to have proceeded to order attachment of the property. He therefore prayed to set aside the order of the Execution Court.

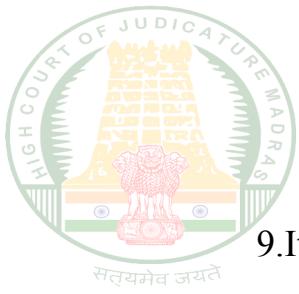


CRP.No.57 of 2025

WEB COPY

7.Per contra, Mr.J.Ram, learned counsel for the respondent would submit that there is no quarrel with regard to the fact that the plaintiff/deGREE holder did not obtain exemption under Order XXII Rule 4 of CPC. He would also fairly submit that even before the decree came to be passed, the defendant had passed away. He would however submit that the defendant is not a relative or neighbour of the plaintiff and it was impossible for the plaintiff to even become aware of the factum of the death of the defendant and therefore, the plaintiff cannot be found fault with for not bringing to the notice of the Court, the death of the defendant. He would further invite my attention to Order XXII Rule 10(A) of CPC, which casts a duty on the pleader to communicate to the Court, the death of the party. He would therefore state that the legal heirs of the defendant cannot escape from the liability by raising such technical objections and he would state that the legal heirs are bound to obey the decree. He would therefore pray for dismissal of the Civil Revision Petition.

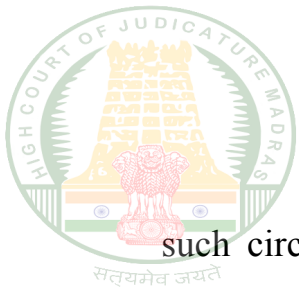
8.I have carefully considered the submissions advanced by the learned counsel on either side.



9.It is not in dispute that on the date of passing of the decree by the Trial Court, the defendant was not alive. No doubt, under Order XXII Rule 10(A), a duty is cast on the advocate appearing for a party, to inform the Court about the demise of his client and thereafter, the Court is required to give notice of such death to the other party and until then, the contract between the advocate and the deceased party is deemed to subsist.

10.Order XXII Rule 4 of CPC speaks about the procedure to be adopted in case of death of one of several defendants or of the sole defendant. In terms of Order XXII Rule 4 of CPC, the plaintiff may get an exemption from the Court from the requirement of substituting the legal representatives of any of the defendants, who failed to file the written statement or having filed the written statement, failed to contest the suit. However, admittedly in the present case, the plaintiff has not resorted to recourse under Rule 4 of Order XXII of CPC.

11.Order XXII Rule 5 further speaks about circumstances where the plaintiff is ignorant of the death of the defendant and as a result of the same, the substitution applications could not be filed within the prescribed period and in



such circumstances, the Rule requires the Court to consider any application under Section 5 of the Limitation Act, having due regard to the fact of ignorance of the death of the defendant, if proved.

12.In the decision of *B.Venkatesan's case*, this Court held that when the decree was passed without obtaining an exemption under Order XXII Rule 4 of CPC, the decree against the dead person would only be a nullity in the eye of law.

13.In *T.Ganavel's case*, the Hon'ble Supreme Court held that despite mandate of Order XXII Rule 10(A) of CPC, the exemption under Order XXII Rule 4 would have to be obtained by the plaintiff, before the pronouncement of the judgment as against a dead person. However, in the facts of the present case, it is clear that no such exemption has been obtained. Therefore I have no hesitation in following the dictum of the Hon'ble Supreme Court in *T.Gnanavel's case* and also by this Court in *B.Venkatesan's case* to hold that the decree passed in O.S.No.8 of 2013 is a nullity and consequently, the decree cannot be executed at all and the attachment order passed by the Executing Court has to be necessarily go. At the same time, merely because the decree is



CRP.No.57 of 2025

declared to be a nullity having been passed against a dead person, it cannot foreclose the rights of the plaintiff once and for all. It is always open to the plaintiff to take out appropriate applications to implead the legal heirs of the deceased sole defendant in O.S.No.8 of 2013 and proceed against them, for recovery of monies allegedly due under the suit claim.

14. Giving such liberty to the plaintiff, the Civil Revision Petition is allowed and the order dated 25.09.2024 in E.P.No.215 of 2015 in O.S.No.8 of 2013 on the file of the Principal Sub-Court, Kanchipuram, is hereby set aside. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

27.06.2025

Speaking/Non-speaking order
Index : Yes/No
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To

1. The Principal Sub-Court, Kancheepuram.



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CRP.No.57 of 2025

P.B.BALAJI.J,

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Pre-delivery order made in
CRP.No.57 of 2025
& CMP.No.517 of 2025



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CRP.No.57 of 2025

27.06.2025