

Cmp(MD) Nos.381 & 382 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CMP(MD) Nos.381 & 382 of 2023

in

CRP(MD) No.2130 of 2015

- 1.Srinivasan (Died)
- 2.Suja Krishna
- 3.S.R.Sumedha Vallee
- 4.S.R.Senthil Vas Narayanan
- 5.S.R.Sylaja Vallee Narayan
- 6.S.R.Sarravana Vas Narayanan
- 7.S.R.Sobhana Vallee Narayan
- 8.S.R.Sree Vas Narayanan

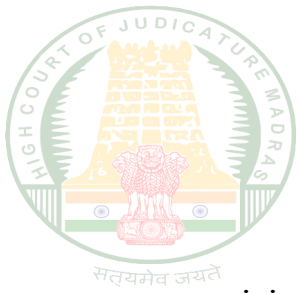
...Proposed
Petitioners/ legal heirs of
Revision petitioner, Srinivasan

Vs.

Dr.Jeyaram

... Respondent

Common Prayer: Civil Miscellaneous Petitions are filed under Order 9 Rule 9 of Civil Procedure Code and under Order 22 Rule 3 of Civil Procedure Code, to set aside the order, dated 21.06.2022, passed by this Court in CRP(MD) No.2130 of 2015 and to restore the civil



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revision petition and to being on record the petitioners 2 to 8, the legal representatives of the deceased petitioner respectively.

For Petitioners : Mrs.J.Anandhavalli
For Respondent : Mr.Brijesh Kishore

COMMON ORDER

These Civil Miscellaneous petitions were filed by the legal heirs of one Srinivasan, who is the petitioner in CRP(MD) No.2130 of 2015, which was filed as against the fair and decreetal order passed by the learned Principal District Munsif, Kuzhithurai in E.P.No.21 of 2015 in O.S.No.501 of 2000, dated 07.08.2015. The Civil Revision Petition filed by the defendant Srinivasan in CRP(MD) No.2130 of 2015 was dismissed by this Court on 21.06.2022, considering the judgment and decree passed by this Court in SA(MD) Nos.679, 988 of 2006, dated 04.04.2014 and the manner in which, the revision petitioner /tenant has protracted the proceedings.



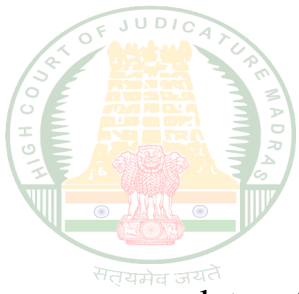
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2.The learned counsel for the petitioners submits that these Civil Miscellaneous Applications were filed on 14.12.2022 that the revision petitioner, Srinivasan died on 30.07.2021, however it was not informed by the legal heirs of Srinivasan, before this Court, when the Civil Revision Petition was listed for hearing. Therefore, according to the petitioners, the order passed as against a dead person is of nullity, and accordingly, the order passed by this Court in CRP(MD) No.2130 of 2015, dated 21.06.2022 has to be set aside and restored.

3.In view of the submissions made by the learned counsel for the petitioners, this Court has directed the Registry to list these applications along with the order passed in CRP(MD) No.2130 of 2015, dated 21.06.2022. Accordingly, on the order of the Honourable Administrative Judge, these applications are listed before this Court on 24.02.2025 along with the Civil Revision Petition.

4.The learned counsel appearing for the petitioners submits that the revision petitioner Srinivasan died on 30.07.2021 and on the



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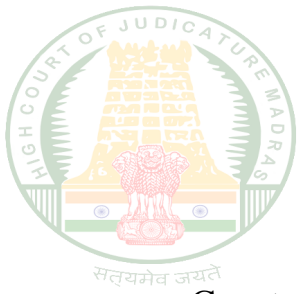
date of disposal of CRP(MD) No.2130 of 2015, on 21.06.2022, the revision petitioner was no more, therefore, the order passed by this Court as against the dead person, in the above Civil Revision Petition is of nullity and accordingly, it has to be necessarily set aside and restored for further hearing. The learned counsel for the petitioner, by referring to Order 22 Rule 10(A) of Civil Procedure Code submits that the above provision mandates the Pleader appearing for a party in a suit must inform the Court about the death of that party. According to the learned counsel, the revision petition was taken up for hearing only on 14.06.2022, after four years from the last posting date 20.07.2016 and therefore, she could not get proper instructions, within a week. The learned counsel further submits that the respondent was aware of the death of the revision petitioner, however, he has failed to inform the same to the Court. However, the learned counsel admitted in her written submissions that without knowing the death of the revision petitioner, she has argued the matter since the revision petition was listed under the caption for orders.



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5.The learned counsel for the respondents submits that the legal heirs of the deceased Srinivasan have intentionally not informed the Court about the death of their father in order to drag on the proceedings further. However, according to him, the revision petitioner died on 30.07.2021. The revision petition was filed by the defendant in O.S.No.501 of 2000, as against the order of delivery passed by the Execution Court in the execution proceedings initiated in the year 2015. The learned counsel for judgment debtor/petitioners/legal heirs of the Revision petitioner has filed a memo, before the Execution Court on 05.10.2021 informing the respondent/decreed holder about the death of the revision petitioner on 30.07.2021. The decreed holder has also filed EA No.1 of 2021 before the Execution Court, to implead these petitioners/legal heirs of the deceased judgment debtor. Therefore, the onus cannot be shifted to the respondent/decreed holder that he ought to have informed the death of the revision petitioner, even though the petitioners/legal heirs of the judgment debtor themselves have entered appearance through their counsel in the EP proceedings, which is pending before the Execution

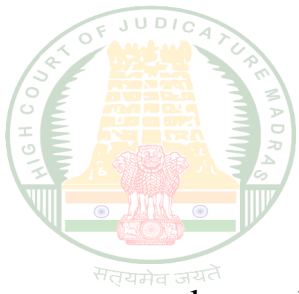


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Court and also when the execution proceedings are adjourned periodically by referring the proceeding in CRP(MD) No. 2130 of 2015 before this Court and they have not filed any application to implead them as parties in the revision proceedings in time and also they have failed to inform this Court about the death of the revision petitioner, when these petitions were listed for hearing before this Court on 14.06.2022 as well as on 21.06.2022.

6.The learned counsel has also pointed out that the judgment debtor was a tenant of the vendors of the decree holder and they have failed to vacate the premises as per their oral instructions at the time of sale. Therefore, the suit itself was filed for recovery of possession and for mesne profit. The suit was dismissed on 30.01.2003, however, the first appeal was allowed in their favour, which was also confirmed by this Court in Second appeals as early as in the year 2014. Even after that, the tenant is dragging on the proceedings by challenging the order passed by the Execution Court for delivery in the year 2015 and further dragging the proceedings till date. Therefore, according to the



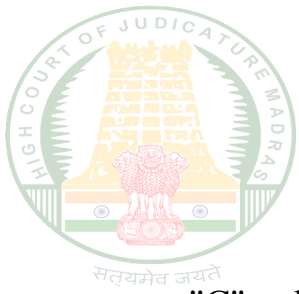
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learned counsel, there is no merits in these applications and therefore, these applications are liable to be dismissed.

7.This Court considered the rival submissions made and also perused the materials placed on record.

8.The facts of this case are useful to decide this issue that the respondent/plaintiff had filed the suit in O.S.No.501 of 2000, before the Principal District Munsif Court, Kuzhithurai, seeking for a decree for evicting the defendant/petitioner (Srinivasan), from the plaint "C" schedule building and for recovery of possession in respect of plaint "B" and "C" schedule properties and future mesne profits, injunction in respect of "A", "B" and "C" of plaint schedule properties and other reliefs. The trial Court dismissed the suit by its judgment and decree, dated 30.01.2003. Aggrieved over the same, the respondent filed appeal in A.S.No.15 of 2003, before the Subordinate Court, Kuzhithurai. The learned Subordinate Judge, Kuzhithurrai, by a Judgment and decree dated 17.01.2005, decreed the suit in respect of

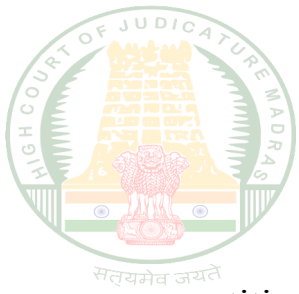


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"C" schedule property for recovery of possession and partly allowed the relief in respect of "B" schedule property and granted a decree of injunction in favour of the plaintiff in respect of "A" schedule property. Aggrieved over the judgment and decree passed in A.S.No. 15 of 2003, dated 17.01.2005, the defendant filed second appeal before this Court in S.A.(MD) No.679 of 2006. The plaintiff had also filed a Second Appeal in SA(MD) No.988 of 2006, in respect of modifying portion of the judgment and decree and partly dismissing the suit in respect of "B" schedule property. This Court, by its common judgment and decree, dated 04.04.2014 was pleased to dismiss both the appeals by confirming the judgment and decree passed by the first Appellate Court in A.S.No.15 of 2003, dated 17.01.2005.

9.The plaintiff filed an Execution Petition in E.P.No.21 of 2015, before the Principal District Munsif Court, Kuzhithurai, seeking for recovery of possession of "C" schedule property as per the decree passed in his favour. The Principal District Munsif, Kuzhithurai, by a fair and decreetal order, dated 07.08.2015 was pleased to allow the



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petition, directing the defendant to hand over the vacant possession of "C" schedule property. Aggrieved on that, the defendant /Srinivasan filed the above Civil Revision Petition before this Court in CRP(MD) No.2130 of 2015 and the same was disposed of by this Court on 21.06.2022, which is as under:-

“5.It is seen from the records that this Court, while dismissing the second appeals in SA(MD) Nos.679 & 988 of 2006, has observed that the defendant has to be vacated from the premises. Therefore, this Court is not inclined to interfere with this civil revision petition at this stage, when the delivery has been ordered by the EP Court.

6.Considering that the issue has been protracted for more than 20 years, the respondent is at liberty to file necessary application before the EP Court to take possession of the property and on filing of such application, the EP Court, shall dispose it of and ensure that the delivery is effected within a period of two weeks from the date of such application. No costs.”



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10. After perusal of the available materials, including the common judgment and decree passed by this Court in SA(MD) Nos. 679 and 988 of 2006, dated 04.04.2014 and after providing sufficient opportunity of hearing to the learned counsel for the petitioner, the Civil Revision Petition was disposed of by this Court, by its order, dated 21.06.2022. Now, the proposed petitioners 2 to 8, who are the legal heirs of the revision petitioner filed the present petitions, to set aside the order, dated 21.06.2022, passed by this Court in CRP(MD) No.2130 of 2015 and to bring on record the petitioners 2 to 8, the legal representatives of the deceased sole petitioner as petitioners 2 to 8 in the above Civil Revision Petition. It is the duty of the petitioner's counsel to inform the Court regarding the death of the revision petitioner, while hearing the revision petition itself. Without doing so, shifting the blame on the respondent counsel that the respondent ought to have informed about the death of Srinivasan is not acceptable and it is only for the purpose of dragging on the execution proceedings pending before the Execution Court.



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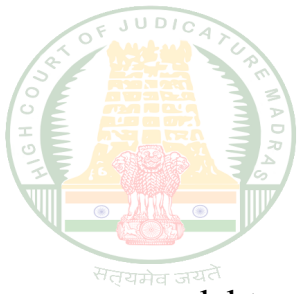
11. In case of death of a party to the proceedings, a duty is cast upon the Pleader to communicate the same to the Court and the Court shall thereupon give notice of such death to the other party.

Order 22 Rule 10(A) of CPC is extracted as under:-

10A. Duty of pleader to communicate to Court death of a party:-

Wherever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall there upon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.

The petitioner claims that after 2016, the case was listed for hearing only on 14.06.2022 and on that date, it was again adjourned to 21.06.2022 under the caption "for orders". Therefore, the petitioner's counsel claims that she was not having sufficient time to get instructions. However, it is admitted that the death of the petitioner was informed in the EP proceedings by these petitioners/legal heirs of the judgment debtor through their counsel by filing a memo on 05.10.2022 and therefore, the respondent/decreed holder has also filed EA 1 of 2021 to implead the legal heirs of the deceased judgment



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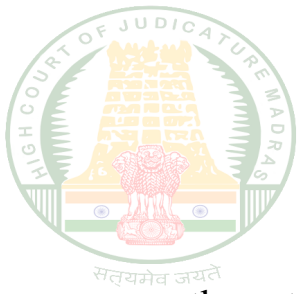
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debtor. The petitioners/legal heirs of the Judgment debtor were also impleaded in the execution petition and the execution petition was pending on account of the proceedings in Civil Revision Petition before this Court. Therefore, it cannot be claimed that the legal heirs are not aware of the Civil Revision Petition, which is pending before this Court, arising out of an order passed by the execution proceedings in EP No. 21 of 2015 in O.S.No.501 of 2000, dated 07.08.2015.

12.The Honourable Supreme Court in ***General Manager of the Raja Durbhunga Vs. Maharaja Coomar Ramaput Sing*** reported in ***(1871-72) 14, Moore's I.A.605***, has held as under:-

"the actual difficulties of a litigant in India begin when he as obtained a decree".

The Honourable Supreme Court has also held that it must be remembered that procedure is merely a handmaid of justice and cannot subvert the course of justice. As noted in ***Shub Karan Bubna @ Shub Karan Prasad Bubna Vs. Sita Saran Bubna***, reported in ***2009 AIR SCW 6541***, the success of a party in a suit means nothing until he gets



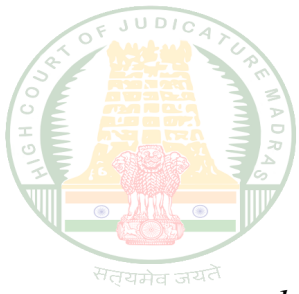
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the actual relief. This will ensure meaningful efficient implementation of the code. It is important to remember that if a party is not able to obtain relief within his lifetime, then there is obvious loss of faith, which is a cornerstone of the judicial system.

13.In yet another judgment, the Honourable Supreme Court in ***P.Jesaya (dead) by LRs., Vs. Sub Collector and another***, reported in ***(2004) 13 SCC 431***, has already held as under:-

"3.The only contention taken up in this appeal is that the first respondent, in the appeal before the High Court, had died during the pendency of that appeal. It is contended that his heirs were not brought on record and, therefore, the appeal before the High Court had abated. In support of this contention reliance is placed on Order 22 Rule 4 of the Code of Civil Procedure as well as the Judgments of this Court in the case of Mithailal Dalsangar Singh Vs.Annabai Devram Kini and in the case of Amba Bai Vs Gopal. It is submitted that as the appeal had abated, the judgment delivered by the High Court is non est and cannot be enforced.

4.Though the arguments are attractive one must also keep in mind Order 22 Rule 10 of the Code of Civil Procedure. It is



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obligatory on the pleader of a deceased to inform the Court and the other side about the factum of death of a party. In this case, we find that no intimation was given to the Court or to the other side that the first respondent had died. On the contrary a counsel appeared on behalf of the deceased person and argued the matter. It is clear that the attempt was to see whether a favourable order could be obtained. It is clear that the intention was that if the order went against them, then thereafter this would be made a ground for having that order set aside. This is in effect an attempt to take not just the other side but also the Court for a ride. These sort of tactics must not be permitted to prevail. We, therefore, see no reason to interfere. The appeal stands dismissed. There will be no order as to the costs."

14.Following the above cited judgments of the Honourable Supreme Court, this Court has passed an order in a similar proceedings in N.Kamatchi Mudaliar and others, Vs.A.Pankajam, Review Application No.10 of 2020 in CMP No.833 of 2020 in S.A.No.1076 of 1992, wherein, this Court has held as under:-



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"11. In the decision in P. Jesaya by Lrs vs. Sub-Collector and another cited supra, it has been held thus.

3. The only contention taken up in this appeal is that the first respondent, in the appeal before the High Court, had died during the pendency of that appeal. It is contended that his heirs were not brought on record and, therefore, the appeal before the High Court had abated. In support of this contention reliance is placed on Order 22 Rule 4 of the Code of Civil Procedure as well as the judgments of this Court in the case of Mithailal Dalsangar Singh v. Annabai Devram Kini [(2003) 10 SCC 691] and in the case of Amba Bai v. Gopal [(2001) 5 SCC 570] . It is submitted that as the appeal had abated, the judgment delivered by the High Court is non est and cannot be enforced.

4. Though the arguments are attractive one must also keep in mind Order 22 Rule 10 of the Code of Civil Procedure. It is obligatory on the pleader of a deceased to inform the court and the other side about the factum of death of a party. In this case we find that no intimation was given to the court or to the other side that the first respondent had died. On the contrary a counsel appeared on behalf of the deceased person and argued the matter. It is clear that the attempt was to see whether a favourable order could be obtained. It is clear that the intention was that if the order



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went against them, then thereafter this would be made a ground for having that order set aside. This is in effect an attempt to take not just the other side but also the court for a ride. These sort of tactics must not be permitted to prevail. We, therefore, see no reason to interfere. The appeal stands dismissed. There will be no order as to costs."

In the decision in C. Manoharan vs. C.V. Subramaniam and others reported in 2006 4 MLJ 898 cited supra, it has been held thus.

"18. Mr.T.R.Rajagopalan, learned senior counsel for the contesting respondents, drawing my attention to Order 22, Rule 10-A CPC, supported by a decision of the Apex Court in P.JESAYA (DEAD) BY LRS. vs. SUBCOLLECTOR AND ANOTHER [(2004) 13 SCC 431], would submit that the pleader for the parties not having discharged his duty to inform the Court and other parties, of the death, and continued to plead matter, L.Rs. of respondent were bound and in this view, it should be held, appeal had not abated. In the case involved in the above decision, a similar situation like the one in the case on hand had arisen. The Apex Court, considering the amended provisions of the Code of Civil Procedure, under Order 22 Rule 10-A CPC, as well as the duty of the Pleader, came to the conclusion, that the decree passed cannot be treated as nullity, even referring the



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decision relied on by the counsel for the appellant in Ambabai case. Therefore, as per the ratio laid down by the Apex Court in P.Jesaya case, it is to be held, that the decree passed in A.S.No.59 of 1993 is binding upon the L.Rs. of the first plaintiff also and the decree cannot be treated as a nullity. Because of this reason also, as indicated above, in the grounds of appeal, when appeal is preferred by only the second plaintiff, it is specifically stated, cause of action survives and this being the admitted position, even by the appellant, the submission made by the learned senior counsel for the appellant, in my considered opinion, is erroneous, liable to be rejected. Thus holding, the decree in A.S.No.59 of 1993 is valid, now it is to be seen as per the Substantial Question of Law framed, whether that could be sustained or not, on merits."

15.In view of the forgoing reasons and discussions, this Court is not inclined to entertain these petitions. Accordingly, these Civil Miscellaneous petitions are dismissed.

23.06.2025

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B.PUGALENDHI, J.,

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Common Order made in
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in
CRP(MD) No.2130 of 2015

23.06.2025