

IN THE COURT OF THE DISTRICT JUDGE, KARUR
PRESENT:- THIRU R. SHANMUGASUNDARAM, B.Com., L.L.B.,
PRINCIPAL DISTRICT JUDGE.

Tuesday, the 25th day of April 2023

E.P.No.36/2021 in E.P.No.35/2016
in O.S.No.44/2012
[CNR.No.TNKR-01-000380-2021]

Vijayalakshmi

...Petitioner/Plaintiff

vs.

1. A. Murugesan (Died)
2. Asha
3. Meena @ Meenakshi
4. Baby

...Respondent/Defendant

...2nd class legal heirs of Murugesan

This execution petition coming on before me for hearing on 17.04.2023 in the presence of Thiru T. Ravikumar, advocate for the petitioner, Thiru. A. Muhamed Yousuff, advocate for the respondents 2 to 4 and the 1st respondent having reported dead and upon hearing the arguments on both sides and having stood over for consideration till this day, this Court passed the following

ORDER

The petitioner has filed this petition seeking to direct the respondents/defendants for delivery of the petition mentioned property as per the Sale Deed dated 19.03.2020 in respect of the suit property executed by this Court on behalf of the respondent/defendant in favour of the petitioner/plaintiff.

Brief averments of the petition filed by the petitioner/plaintiff is as follows:-

2) According to the petitioner, a preliminary decree was passed against the respondent/defendant on 05.11.2014 that the defendant is directed to execute a sale deed in favour of the plaintiff as per Sale Agreement dated 02.07.2012 and the plaintiff is directed to deposit the balance of sale price in to the Court. If the defendant fails to execute the Sale deed the plaintiff is entitled to get the sale deed

executed through process of the Court. Further, the defendant, his men and agents are restrained by way of permanent injunction from in creating any kind of encumbrance over the suit property and the defendant is directed to pay the plaintiff the sum of Rs.1,38,303.50 towards costs of the suit. It is submitted that the respondent/defendant has not come forward to execute the sale deed as per the sale agreement, as per the decree passed in this suit. Hence, as per the decree, the petitioner/plaintiff has deposited the balance of Sale consideration of Rs.9,17,500/- on 24.11.2014 before this Court. As such, the petitioner/plaintiff has paid the entire sale consideration of Rs.17,88,500/-. Then on 10.03.2020 this Court has executed the sale deed in respect of the suit property in favour of the petitioner/plaintiff and registered the same with No.I Joint Sub R.D., Karur. Further, during the pendency of the above execution petition, the 1st respondent/defendant died and on enquiry in the locality, the petitioner/plaintiff came to know that the 1st defendant viz.Murugesan was unmarried issueless and his father and mother predeceased him. Therefore, the respondents 2 to 4 who are the 2nd class legal heirs of the deceased 1st defendant were impleaded as respondents in the above execution petition as per order in E.A.No.01/2022 dated 17.10.2022. Hence, they are added as parties to this execution petition. Hence, prays to allow this petition.

Brief averments of the counter filed by the 2nd respondent and it was adopted by the respondents 3 and 4 is as follows:-

3) The 2nd respondent has filed a counter denying the claim of the petitioner. It is submitted that the above E.P.No.36/2021 filed by the petitioner/plaintiff is against the provisions of law and probabilities and circumstances of the case and hence, it is liable to be rejected for filing a fresh E.P. according to law. It is submitted that the date of demise of the 1st respondent/defendant was not mentioned in E.A.No.01/2022 as he died on 01.09.2020 well before filing of the above E.P.No.36/2021. Therefore, this E.P. was filed against a dead person. It is admitted that the respondents 2 to 4 are added as 2nd class legal heirs of the 1st respondent as per order in E.A.No.01/2022. Further, it is submitted that respondents 2 to 4 who are the 2nd class legal heirs are

taking various steps to get legal heir certificate from the competent Government Authority. At last the respondents 2 to 4 have no other go except to file a suit in O.S.No.170/2022 on the file of the learned Additional District Munsif, Karur against the District Collector, Karur and Tahsildar, Karur for the relief of declaration and mandatory injunction. Therefore, as the respondents 2 to 4 are not yet decided by any authority as legal heirs of deceased Murugesan for which the above case is pending to get 2nd class legal heirs, if the E.P. is proceeded against these unrecognized legal heirs then it will be a procedural irregularity which will leads to multiciplity of proceedings and waste of valuable time of this Court and hence, the respondents 2 to 4 filed a petition for stay of above E.P.No.36/2021 till the disposal of the above O.S.No.170/2022 on the file of the learned Additional District Munsif, Karur. Further, one Vimala has filed a suit against the petitioner/plaintiff in O.S.No.95/2021 on the file of the learned Principal District Munsif, Karur for the relief of permanent injunction. Likewise one Rajaram has filed a suit against the petitioner/plaintiff in O.S.No.324/2020 on the file of the learned Additional District Munsif, Karur for the relief of permanent injunction. It is submitted that the petitioner/plaintiff suppressed these facts and filed this execution petition. Further, it is submitted that the respondents 2 to 4 are the 2nd class legal heirs of the 1st defendant and so they are not able to file appeal against the decree got by the petitioner/plaintiff. Further, one R. Loganathan had issued a notice dated 09.01.2021 through his counsel to these respondents 2 to 4 and also against the above petitioner/plaintiff as though he is having a sale agreement dated 25.03.2011 as though executed by the deceased Murugesan and hence, the above decree holder S.Vijayalakshmi's Court auction purchase is not according to law. The respondents 2 to 4 issued reply notice dated 05.03.2021 stating that the notice of him itself hit by the provisions of Limitation Act and he has no locus standi to implement the alleged agreement before the Courts of Law. Hence, prays to dismiss the petition.

4) This Court considered the rival submissions on both sides.

5) The question before this Court is whether this execution petition has to be allowed or not?

ANSWER TO THE POINT:-

6) The petitioner/decreed holder has filed this petition seeking to direct the respondents/defendants for delivery of the petition mentioned property as per the Sale Deed dated 19.03.2020 in respect of the suit property executed by this Court on behalf of the respondent/defendant in favour of her. The petitioner/decreed holder has filed a suit for specific performance against the 1st respondent and obtained decree on 05.11.2014. As per the decree, the defendant was directed to execute a sale deed in favour of the plaintiff as per Sale Agreement dated 02.07.2012 and the plaintiff was directed to deposit the balance sale price in to the Court. If the defendant fails to execute the Sale deed the plaintiff is entitled to get the sale deed executed through process of the Court. Further, the defendant, his men and agents are restrained by way of permanent injunction from in creating any kind of encumbrance over the suit property and the defendant is directed to pay the plaintiff the sum of Rs.1,38,303.50 towards costs of the suit. Since the 1st respondent failed to perform the decree, the petitioner has filed E.P.No.35/2016 for execution of sale deed in accordance with the decree dated 05.11.2014.

7) This Court has perused the records. It reveals from the records that this Court has executed the sale deed dated 10.03.2020 in favour of the petitioner/decreed holder in respect of the property described in the schedule of the petition. The petitioner has filed the certificate copy of the sale deed as document No.1 and the certificate copy of the decree as document No.2. Further, the copy of the petition and order passed in E.P.No.35/2016 is filed as document No.3. From the reading of the above said documents, it reveals that the petitioner/decreed holder got a decree for specific performance and sale deed in her favour. Now, the petitioner/decreed holder has come forward with this application for delivery of the property covered under the decree and the sale deed. The judgment debtor viz.the 1st respondent died and his 2nd class legal heirs i.e. the respondents 2 to 4 are added as parties to this execution

petition. The main contention raised on behalf of the respondents 2 to 4 is that the decree holder viz. the 1st respondent died on 01.09.2020. The present petition was filed on 04.02.2021 as against the 1st respondent as if he was alive. Further, this Court has taken the petition on its file and ordered to issue notice to the judgment debtor and the notice was returned as Judgment debtor died. Therefore, the respondents 2 to 4 were substituted as legal representatives of the 1st respondent. Therefore, they contend that this petition is filed against the dead person and hence, this petition is not maintainable. In order to substantiate the same, the respondents 2 to 4 have filed the copy of the death certificate of the 1st respondent. A perusal of the death certificate would reveal that the 1st respondent was died on 01.09.2020. The present petition is filed on 04.02.2021. Therefore, it is clear that the present petition is filed when the 1st respondent was not alive. However, this Court has ordered to take the petition on file and no adverse order was passed against the 1st respondent. If any order was passed against the dead person, the same would be nullity. No order has been passed against the 1st respondent. Therefore, the above said principle is not applicable to the facts of the present case. It is true that the petition has been filed against the dead person and the petition was also taken on file against the dead person. It is only an irregularity and the same could be cured by substituting legal representatives. Accordingly, the petitioner/decreed holder has filed E.A.No.01/2022 to substitute the respondents 2 to 4 as the legal representative of the 1st respondent. In that application, the respondents 2 to 4 have appeared through their counsel. They did not file their counter. Therefore, the petition was allowed on 17.10.2022. The respondents ought to have taken the present grounds in the above E.A.No.01/.2022. They have not filed any objection to the above said application. Therefore, the respondents are estopped from raising contention in the present execution petition. Even then the petition filed against the dead person is not a nullity and further, the legal heirs of the deceased 1st respondent are added as respondents 2 to 4. Therefore, the contention raised on the side of the respondents 2 to 4 that the petition against the respondents 2 to 4 is not sustainable.

8) From the records, it is clear that the respondents 2 to 4 are the 2nd class legal heirs of the deceased 1st respondent. There is no quarrel or there is no dispute that the respondents 2 to 4 are the 2nd class legal heirs of the 1st respondent. Except the respondents 2 to 4, no one claim as legal heirs of the deceased 1st respondent. Therefore, the respondents 2 to 4 are alone the legal heirs of the deceased 1st respondent. The contention raised by the respondents 2 to 4 that they applied for legal heir certificate from the Tahsildar, Karur and he refused to give the legal heir certificate and so, they have filed the suit for declaration that they are the 2nd class legal heirs of the deceased Murugesan in O.S.No.170/2022 on the file of the learned Additional District Munsif, Karur and the same is pending. On the strength of the above said suit, the respondents 2 to 4 claim that until the legal heirship of the deceased Murugesan is declared by the learned Additional District Munsif, Karur, the petitioner/deGREE holder cannot proceed the execution petition against them. It is the case of the respondents 2 to 4 that they are alone the legal representatives of the deceased 1st respondent. Therefore, it is well settled law that in order to substantiate the legal representative of party to the proceedings, the legal heir certificate or declaration of decree is not necessary. Further, if any question arises as to whether any person is not the legal representative of the deceased respondent, such question shall be determined by the Court under Order 22 Rule 5 of C.P.C. The case in hand, the petitioner/deGREE holder has filed E.A.No.01/2022 to substitute the respondents 2 to 4 as the legal heirs of the deceased Murugesan i.e. the 1st respondent and question was arised as to whether the respondents 2 to 4 are the legal representatives of the deceased. This Court has rightly allowed the E.A.No.01/2022 and the respondents 2 to 4 were recognized as legal representatives of the deceased 1st respondent. Further, it is not the case of the respondents 2 to 4 that except the respondents 2 to 4 any other person is claiming the legal heirship of the deceased 1st respondent. Therefore, the contention raised by the respondents that until the decree is passed by the learned Additional District Munsif, Karur in O.S.No.170/2022, this petition cannot be proceeded is unsustainable.

9) The 3rd ground raised by the respondents 2 to 4 is that one Rajaram and one Vimala who are the tenants have filed the suit for permanent injunction against the petitioner in respect of the properties in O.S.No.324/2020 and O.S.No.95/2021 respectively and the above said suits are pending before the learned District Munsif Court, Karur. Therefore, the petitioner/decree holder suppressed the pendency of the above said suits and filed this execution petition. The claim of the above said Rajaram and Vimala as a tenant in respect of the suit schedule property cannot be decided in this proceedings at this instance of the respondents 2 to 4. If at all the above said Rajaram and Vimala have lawful right to hold possession under valid tenancy, the same can be decided at the appropriate stage. Therefore, the petitioner who is the decree holder is entitled to get possession from the respondents 2 to 4 who are the legal representatives of the Judgment Debtor. Except the above said contention no other valid objection raised by the respondents 2 to 4 in the counter. It is well settled law that the Execution Court cannot go beyond the decree. Therefore, there is no impediment to proceed the execution against the respondents/defendants. Therefore, in view of the above stated facts and reasons, this petition is liable to be allowed. Accordingly, this petition is allowed.

10) In the result, this petition is allowed and the delivery is ordered against the respondents/defendants. Delivery by 05.06.2023. Batta in 3 days.

Dictated to the Steno-typist, transcribed by him, corrected and pronounced by me in open Court on this the 25th day of April 2023.

PRINCIPAL DISTRICT JUDGE,
KARUR.

PRINCIPAL DISTRICT COURT,
KARUR

E.P.No.36/2021 in
E.P.No.35/2016 in
O.S.No.44/2012

D.D. 25.04.2023

DRAFT/FAIR ORDER
