
(2009) 01 MAD CK 0279

In the Madras High Court

Case No : C.R.P. (PD) (MD) No. 1798 of 2007 and M.P. No. 1 of 2007

C. Saroja and Subramanian

APPELLANT

Vs

Shriram City Union Finance Ltd.

RESPONDENT

Date of Decision : 09-01-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 1
Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 21, 21(1), 22

Citation : (2009) 2 MLJ 275

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : K. Hemakarthiskeyan, for the Appellant; R. Sundar, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order made in I.A. No. 110 of 2006 in S.C. No. 44 of 2006 dated 28.06.2007 on the file of the Second Additional District Munsif Court Trichirappalli.

2. The defendants in S.C. No. 44 of 2006 are the revision petitioners. The said suit was filed by the respondent herein seeking a direction to the defendant to pay a sum of Rs. 3,646/- with future interest at 30% per annum and cost from the date of plaint till the date of realisation. The said suit was filed on 09.12.2006 against the original defendant who died on 18.04.2005 leaving behind the petitioners herein who are the legal representatives of the deceased defendant i.e., widow and the father of the defendant.

3. According to the respondent/plaintiff, the death of the defendant came to his knowledge through the endorsement made by the Process Server in the summons, and immediately, he filed I.A. No. 110 of 2006 to implead the legal heirs of the deceased defendant who are the petitioners herein. The said

application was resisted by the petitioners by filing a counter stating that the averment made in the affidavit that the death of the defendant was known to the plaintiff through the Process Server is false and denied. No other statement about the knowledge of the respondent prior to the filing of the suit is made in the counter affidavit. The learned Second Additional District Munsif, Thiruchirappalli allowed the said application and impleaded the legal representatives of the deceased defendant namely the petitioners herein.

4. The said Order is challenged in this Civil Revision Petition by contending that the deceased defendant died on 18.04.2005 and the petition to implead the legal heirs was filed on 22.11.2006 with a delay of 19 months and the petitioners and the deceased defendant lived separately and they were not in enjoyment of the properties of the deceased.

5. The learned Counsel for the petitioners argued that the suit having been filed against the dead person, the same is liable to be dismissed and the application filed to bring the legal representatives of the deceased defendant is unsustainable.

6. The learned Counsel for the respondent, on the other hand, submits that the plaintiff was not having any knowledge about the death of the defendant and the impleadment petition having been filed before the expiry of limitation to recover the amount, the said petition is maintainable and the delay in filing the petition to bring the legal representatives on record having been sufficiently explained and the same was accepted by the Court below, there is no perversity in the said finding.

7. I have considered the submissions made by the learned Counsel appearing for the petitioners as well as the learned Counsel appearing for the respondent.

8. The question arises for consideration is whether the respondent was aware of the death of the original defendant at the time of filing of the suit and by bringing the legal representatives on record, whether the right of the petitioners are affected in any manner.

9. Order 22 Rule 1 CPC is relevant to be considered for the disposal of this case which reads as follows;-

No abatement by party's death, if right to sue survives - The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

10. As rightly contended by the learned Counsel for the respondent, the death of the original defendant was not known to the respondent herein and only on the return of summons making endorsement that the defendant died, the respondent came to know about the death of the original defendant, and therefore, the respondent has filed application to implead the legal heirs of the deceased defendant. The period of limitation is also not over on the date when the petition to bring on the legal heirs was filed. Therefore, the petitioners' right are not affected and no prejudice is caused to the petitioners by bringing the petitioners

on record as legal representatives of the deceased defendant.

11. In the decision in *Loganatha Mandiri Vs. Seshachala Naidu (deceased) and Others*, , this Court considered a similar issue, i.e., as to whether a suit filed against a dead person can be continued by substituting the legal representatives of the deceased under Order 22 Rule 1 CPC. In paragraph 5 of the said Order, it is held that the suit filed by the plaintiff is maintainable, even though it was originally filed against the dead person by substituting the legal representatives of the deceased.

12. In the decision in *C. Ramamurthi Vs. Karuppasami and Others*, , the very same issue arose and in Paragraph 4, it is held that on impleading the legal representatives, the suit should date back to the original presentation of the plaint. Taking note of Section 21 of the Limitation Act, this Court held that if an application for impleadment is filed on good faith, the impleadment will relate back to the original presentation of the plaint. The only relevant consideration is whether the party has acted in good-faith. The said Order was rendered by this Court taking note of a decision of a Full Bench of this Court in *Gopalakrishnayya v. Lakshmana Rao* reported in 23 LW 418. In the said Judgment, a decision of the Supreme Court in *Ram Prasad Dagduram Vs. Vijay Kumar Motilal Mirakhanwala and Others*, is also referred to and the observation of the Supreme Court is as follows:

The rigour of this law has been mitigated by the proviso to Section 21(1) of the Indian Limitation Act, 1963, which enables the Court on being satisfied that the omission to include a new plaintiff or a new defendant was due to a mistake made in good faith, to direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date. Unfortunately, the proviso to Section 21(1) of the Indian Limitation Act, 1963, has no application to this case and we have no power to direct that the suit should be deemed to have been instituted on a date earlier than 4th November, 1958.

Therefore, even the Supreme Court felt that in matters like this, the Court should have the legal representatives brought on record as new defendants in the place of a dead person, and the date of the filing of the suit should date back to the date of its original presentation into the Court. The Supreme Court observed that Section 22 of the Limitation Act stood in the way of the powers of the Court, which would mean that the Court would always try to uphold the validity of the presentation of the plaint, and the fact that the defendant was dead at the time of the filing of the suit, cannot absolve his legal representatives from being made liable for the debt, provided the claim is established on its merits.

13. In the light of the above decisions, and having regard to the fact that the respondent was not aware of the death of the defendant at the time of filing of the suit, which shows the bona fide and good faith of the respondent/plaintiff, the Court below has rightly impleaded the legal representatives of the deceased defendant who are the petitioners herein. There is no merit in the Civil Revision

Petition and the same is dismissed. It is made clear that though the petitioners are brought on record as legal representatives of the deceased defendant, the respondent/plaintiff is bound to establish his claim against the petitioners in accordance with law for the recovery of the amount. Consequently, connected M.P is also dismissed. No costs.