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Court : Chennai

Decided On : Aug-06-1971

Reported in : (1972)1MLJ166

Appellant : Kumarasami Alias Muthukumaraswami

Respondent : theagarajan

Judgement :

ORDER

S. Maharajan, J.

1. This revision petition is directed against the order of the Revenue Court, Kumbakonam directing eviction under Section 3(4)(b) of the Madras Cultivating Tenants Protection Act (XXV of 1955). Theagarajan, the respondent herein, and Dhanapackiam, his mother, filed the petition under Section 3 (4^a) of Madras Act XXV of 1955 in. the Revenue Court for eviction of one Annamalai Padayachi (since dead) and, Kumaraswami, the petitioner. By his order dated 4th February, 1971, the Presiding Officer of the Revenue Court directed 'the respondents to deposit in Court a sum of Rs. 1,506-83 on or before 10th February, 1971, and report the fact to this Court on 11th February, 1971, failing which he will be evicted from the suitlands'. In pursuance of this interim order the matter was taken up on 18th February, 1971, and the following final order was passed:

When the case is taken up today for hearing both the petitioner and the respondent are present. The petitioner has made an endorsement on the petition stating that the respondent has not paid the amount as per interim order. The respondent wants further time for payment and he has not chosen to make payment so far. The respondent is going on applying for time, without making any payment and he is not earnest in remitting the amount. Interim order has not been fulfilled by the respondent under Section 3(4)(b) of Act XXV of 1955, the Tamil Nadu Cultivating Tenants Protection Act as amended. I direct the respondent be evicted from the suit lands.

It is against this order, Kumarasami, one of the two tenants on record has preferred this revision petition.

2. In his affidavit the revision petitioner asserts that Dhanapackiam, who figured as the 2nd petitioner in the Revenue Court, and who was the mother of Theagarajan, died on 14th June, 1970, that is to say, about 8 months prior to the date of the preliminary order and final order passed by the Revenue Court. He also complains that though he brought this fact to the notice of the Revenue Court and prayed that the legal representatives of Dhanapackiam should be brought on record, the Revenue Court refrained from taking any steps in this behalf. It is further averred in the affidavit that Annamalai Padayachi who ; figured as the 1st respondent in the i Revenue Court and who was the father of the petitioner died on 27th December, 1970, that is to say, about 2 months ' prior to the date of the interim and final orders of the Revenue Court and yet no legal representative of Annamalai Padayachi was added. It is the definite assertion of the petitioner that he objected to the interim order on the ground that it was a nullity because one of the the petitioners and one of the two respondents had died even prior to the date thereof. It is further averred that after the interim order was passed the petitioner herein filed a petition bringing the above facts to the notice of the Revenue Court; but the Revenue Court dismissed the same on 18th February, 1971 and passed the final order of eviction on that date. Though the respondent to this petition has filed a counter affidavit in these proceedings, he has not chosen to deny the allegations made by the petitioner, except to say that even after Annamalai Padayachi's death the petitioner is continuing to cultivate the entire extent of the

land thereby presumably meaning that the non-impleading of the legal representatives of Annamalai Padayachi does not vitiate the order of the Revenue Court. I shall therefore proceed to discuss the objection of the petitioner on the assumption that during the pendency of the proceedings before the Revenue Court and even before the interim order dated 4th February, 1971, Dhanapackiam one of the petitioners, and Annamalai Padayachi, one of the respondents had died and the Revenue Court proceeded with the enquiry without impleading the legal representatives of either despite the fact of their deaths having been brought to its notice. Under Order 22, Rule 3, Civil Procedure Code, where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives the Court on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit. Clause

(2) of the Rules says that where within the time limited by law no application is made under Sub-rule

(1) the suit shall abate so far as the deceased plaintiff s concerned, and, on the application of he defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff, it is not known who are the legal representatives of Dhanapackiam. Therefore, it is not possible to say if the right to apply for eviction of a tenant survived upon the death of Dhanapackiam to Theagarajan alone. If it did, it is the duty of the Court under Order 22, Rule 2 to cause an entry to be made on the record to the effect that the right of Dhanapackiam to sue survived to Theagarajan, whereupon the petition should have been proceeded with at the instance of the surviving petitioner. Similarly, it is not known who are the legal representatives of Annamalai Padayachi, one of the tenants who died during the pendency of the proceedings before the Revenue Court. If Kumarasami, the petitioner herein is the only legal representative of Annamalai Padayachi, it may be said that the right to sue survives against the surviving respondent alone (Kumara-swami) and the Court shall cause an entry to the effect to be made in the record and proceed with the petition against the surviving respondent. If, on the

other hand, there are other legal representatives of Annamalai Padayachi, than Kumaraswami, the right to sue does not survive as against Kumaraswami alone and under Rule 4 of Order 22, Civil Procedure Code, the Court shall cause the legal representatives of the deceased, Annamalai Padayachi to be made a party and shall proceed with the petition. In *Seshamma v. Venkattu* : (1924)47MLJ235 , it has been held that a decree passed against a defendant who died pending suit without bringing his legal representative on the record is a nullity and it cannot be executed against the legal representatives. In *Karain v. Kalu Ram* (1920) ii LL.J. 144, it has been ruled that a decree passed against a respondent in ignorance of the fact of his death is also a nullity. In a case where the plaintiff had applied to bring on record bona fide and owing to ignorance, only 2 out of the 3 legal representatives of the deceased defendant, the Patna High Court laid down -

(1) where all the legal representatives of the deceased were already on record there was no need for application for substitution;

(2) where the deceased had left behind a number of legal representatives, some of whom only were on record, an application for bringing on record the other heirs was necessary and

(3) where an application is made to substitute only some of the heirs, there will be no abatement if the applicant acted bona fide; but if he acted mala fide the suit would abate-*vide Bar-meshwar Math Prasad Singh v. Babu* : AIR1964 Pat116 .

3. That the Revenue Court was aware of the death of one of the respondents can be gathered from the dubious language employed in the interim order. It says, 'I direct the respondents to deposit... failing which he will be evicted from the suit lands'. There is a significant contradiction between the plural used in the earlier part of the order and the singular used in the later part. Evidently, the Court was not sure if it was passing the order against the dead respondent or the living one or both. I have no doubt that the failure of the Revenue Court to bring on record the legal representatives of one of the petitioners and one of the respondents despite its attention having been drawn to their death, constitutes a material irregularity vitiating its order.

4. It is contended on behalf of the respondent that the Revenue Court is untrammelled by the rules of procedure laid down in the Civil Procedure Code. I am unable to agree. In the first place, even apart from the Code, commonsense requires that an order shall not be passed in favour of or against dead persons, because such orders will lead to startling difficulties in execution. In the second place, under Clause (1) of Rule 8 of the Madras Cultivating Tenants Protection Rules, every Revenue Court constituted under the Act shall have the powers exercisable by a civil Court in the trial of suits. Clause (ii) of Rule 8 prescribes that 'the proceedings of the Court shall be summary and shall, as far as possible, be governed by the provisions of the Code of Civil Procedure, 1908, with regard to-

(a) the issue and service of summons:

(b) the examination of parties and witnesses :

(c) the production of documents:

(d) the amendment of pleadings:

(e) the addition of parties

(f) the passing of ex parte orders and setting them aside for good cause;

(g) the ordering and dismissal for default of appearance and setting aside such orders for good cause;

(h) local inspection

(i) passing of orders and

(j) the enforcement of any order, decision or award passed under the Act.

The provisions of Rules 35 and 95 to 103 of Order 21, of the Civil Procedure Code, shall, as far as possible, be applied to proceedings under this Rule. The learned Counsel for the respondent contends that this rule does not specifically extend to the proceedings of the Revenue Court such of the provisions of the Civil Procedure Code, as relate to the addition of legal representatives. It may be noted

that the Rule does not name the Sections of the Civil Procedure Code which are applicable but merely says generally that the provisions of the Civil Procedure Code, with regard to amendment of pleadings, addition of parties, etc., shall govern the proceedings before the Revenue Court. Order 22, Rules 3 and 4, say that the Court, on an application made, shall cause the legal representative of the deceased plaintiff or defendant to be made a party. These rules clearly relate to 'the addition of parties' contemplated in Rule 8 of the Madras Cultivating Tenants Protection Rules. It is, therefore, idle to contend that the Revenue Court is not bound by these rules. The refusal of the Revenue Court to comply with these and allied rules of the Civil Procedure Code, constitutes a material irregularity which vitiates its order. I, therefore, allow the Civil Revision Petition, set aside the order of the Revenue Court, direct it to conform to the rules of the Civil Procedure Code, relating to the addition of the legal representatives of the deceased Dana-packiam and Annamalai Padayachi and proceed to dispose of the petition in accordance with law. In the circumstances of the case, there will be no order as to costs.

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