

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2015

CORAM:

THE HON'BLE MR. JUSTICE D.HARIPARANTHAMAN

C.R.P.No.3051 of 2015
and
M.P.No.1 of 2015

1.Muthusamy

2.Raja

3.Srinivasan

4.Mani

... Petitioners/Petitioners/
Petitioner/Plaintiff

(Cause title accepted vide order of the Court dated 14.07.2015
made in M.P.No.1 of 2015 in CRP.SR.No.23789 of 2015.)

Vs.

Sembayee (Died)

1.Thangammal

2.Ponnammal

3.Ramayi

4.Kunjupillai

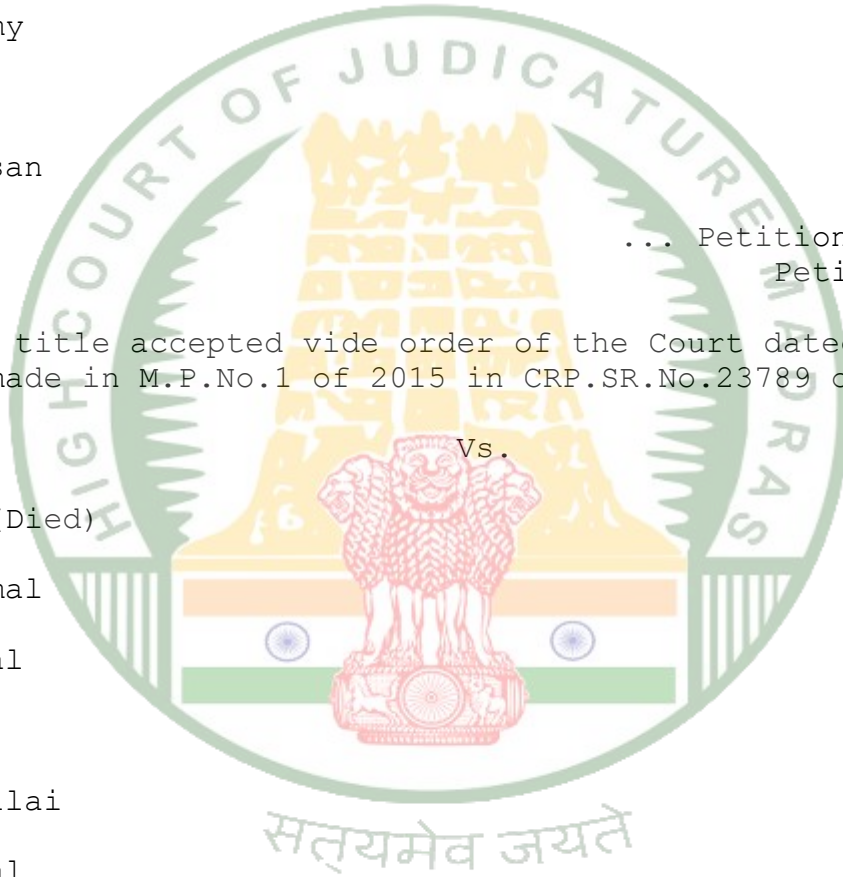
5.Sellammal

6.Rathinammal

7.Pachiammal

8.Kunchal

Pachamuthu (died)



WEB COPY

9.S.A.Mani

10.K.V.Perumal

11.K.Shanmugam

12.A.Ashokan

13.S.Senthilkumar @ Ravikumar

... Respondents 1 to 13/
Respondents 2 to 9 & 11 to 15/
Respondents 2 to 9 & 11 to 15/
Defendants 2 to 9 & 11 to 15

14.Kanagamani

15.P.Thapathy

16.P.Surendiran

17.Kokila

... Respondents 14 to 17/
Proposed LR's of the deceased 10th
Respondent/10th Defendant

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 22.01.2015 made in I.A.No.1318 of 2013 in I.A.No.998 of 2012 in O.S.No.447 of 1995 on the file of the learned District Munsif Court, Sankari.

For Petitioners : Mr.N.Manokaran

O R D E R

The revision petitions herein are the plaintiffs in O.S.No.447 of 1995 on the file of the learned District Munsif Court, Sankari.

2. The prayer in the said suit is for permanent injunction restraining the defendants therein from interfering with the peaceful possession and enjoyment of the plaintiffs over the suit properties.

3. At the time of filing of the suit, 15 defendants were shown as parties. The first defendant died on 03.09.2009. Thereafter, an application in I.A.No.998 of 2012 was filed under Order 22 Rule 4 CPC

to bring the LR's of the 1st defendant on record. It is stated that the same is still pending.

4. While so, the revision petitioners who are the plaintiffs came to know that the 10th defendant had died on 08.05.2003 itself. Hence, an application in I.A.No.1318 of 2013 was filed to bring the LR's of the deceased 10th defendant on record. However, the said application was filed under Order 1 Rule 10 CPC, instead of Order 22 Rule 4 CPC. The Trial Court by an order dated 22.01.2015 rejected the said application in I.A.No.1318 of 2013 on the sole ground of quoting of wrong provision. No other reason has been stated for rejecting the said application.

5. The learned counsel for the revision petitioner relied on the Division Bench judgment of this Court reported in 1995 (I) CTC 479, Subramaniam v. Perumayee and another and submitted that an application cannot be dismissed on technical grounds. The learned counsel relied on paragraph 3 of the said decision and the same is usefully extracted here under:

"3. We are of the view that proceedings for bringing on record the legal representatives of a deceased party being a collateral proceeding, the approach of the Court must be to ensure that the substantial rights of the parties are not defeated by reason of the decision in the collateral proceeding. In a case where the party wantonly and with avowed collateral object fails to bring the legal representatives on record, the matter may be considered on a different footing. In the instant case, when the party has acted on the bone fide legal advice tendered by his counsel, it is not possible to hold that the party wantonly or negligently failed to file the application to bring the legal representative of the deceased 1st respondent on record. Ofcourse, in a case where it is shown that the legal advice was not bonafide and it was only a contrivance used to overcome the delay wantonly caused, the Court can reject the same. No such circumstance is brought on record, nor it is so contended. Therefore, we are of the view that in the facts and circumstances of the case and having regard to the fact that these are collateral proceedings, the delay in filing the application to bring the legal representative of the deceased 1st represent on record deserves to be condoned, as otherwise the parties would be put to loss. The procedure provided for adjudication of the rights of the parties should not be usual in such a way so as to defeat the very right of the parties. After all the procedure is

hand-made of justice. It should be exercised in such a manner that the ends of justice are advanced and the rights of the parties are not defeated. Therefore, keeping in view these principles and also the fact that the suit is the one for partition, we are of the view that the delay in filing the application to bring the legal representative of the deceased on record deserves to be condoned. It is accordingly condoned."

6. Taking into account of the said judgment of the Division Bench, while not interfering with the order dated 22.01.2015 made in I.A.No.1318 of 2013 in I.A.No.998 of 2012 in O.S.No.447 of 1995, the revision petitioners are permitted to file an application under Order 22 Rule 4 CPC to bring on record the LR's of the deceased 10th defendant, particularly taking note of the fact that the application in I.A.No.998 of 2012 in O.S.No.447 of 1995 which was filed to bring the LR's of the 1st defendant on record, is still pending.

7. As and when such application is filed, the Trial Court is directed to dispose of the same on merits and in accordance with law and the order dated 22.01.2015 made in I.A.No.1318 of 2013 in I.A.No.998 of 2012 in O.S.No.447 of 1995 cannot be cited as bar to decide the issue, particularly in view of the judgment of the Division Bench of this Court reported in 1995 (I) CTC 479, Subramaniam v. Perumayee and another.

8. The revision petition is disposed of with the aforesaid directions. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

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To

Sub Assistant Registrar

The District Munsif Court,
Sankari.

+1cc to M/s.N.Manokaran, Advocate, S.R.No.40557

C.R.P.No.3051 of 2015

GGK(CO)
CA(25/09/2015)