

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2015

CORAM

THE HON'BLE MR.JUSTICE D.HARIPARANTHAMAN

C.R.P(PD)No.3174 of 2015

Perumal Naicker (died)

Muthukrishnan S/o R.Perumal Naicker.

...Revision Petitioner

Vs.

1. Muthu
2. Mohan
3. Vijaya

...Respondents

Civil Revision Petition filed under Section 115 Civil Procedure Code against the order and decretal order, dated 13.09.2011, passed in I.A.No.521 of 2011, in O.S.No.1280 of 2006, on the file of II Additional District Munsif Court, Salem.

For Revision Petitioner : Mr.R.Neelakandan

O R D E R

The plaintiff in O.S.No.1280 of 2006, on the file of II Additional District Munsif Court, Salem, is the revision petitioner herein. He filed the Suit for specific performance of an agreement of sale, dated 14.06.2006. During the pendency of the suit, the plaintiff died. Hence, the revision petitioner, being the legal heir of the deceased plaintiff, filed an Interlocutory Application No.521 of 2011, in the said Suit, to condone the delay of 45 days in filing the Application for impleading him as legal heir of the deceased plaintiff. The said Application was dismissed by the Trial Court, by order, dated 13.09.2011, on the ground that the revision petitioner has failed to file an Application for setting aside the abatement caused due to the death of his father/plaintiff. Challenging the said order, the present Revision Petition is filed.

2. Heard the learned counsel appearing for the petitioner.

3. In my opinion, the Trial Court has rightly dismissed the Application in I.A.No.521 of 2011, on the ground that the revision petitioner has failed to file Application for setting aside the abatement caused due to the death of his father/plaintiff. Since the Trial Court dismissed I.A.No.521 of 2011 on the sole ground that no application has been filed for setting aside the abatement, I am inclined to quash the said order and to remand back the matter to the Trial Court to decide the same along with the application that could be filed by the petitioner to set aside the abatement order.

4. Since I am remanding back the matter to the Trial Court to decide the matter afresh, I am of the view that no notice is necessary to the respondents.

5. In the result, the Civil Revision Petition is disposed of in the above terms. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

sd/gg

To

II Additional District Munsif Court,
Salem.

1 CC to Mr.R.Neelakandan, Advocate SR.No. 45588

VSN (CO)
PSI (22.09.2015)

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