

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.1282 of 2016

&

C.M.P.No.7176 of 2016

1.Mrs.D.Kalaivani
2.C.P.Krishnakumar
3.C.P.Ramkumar
4.K.Jayakumari

... Petitioners

VS.

1.Elumalai
2.Mrs.Rani
3.Vadivelu
4.Vijayalakshmi
5.Murugan
6.Krishnaveni
7.Govindhan
8.Ramesh
9.Palani
10.S.Thirumurthy
11.Ravichandran
12.R.V.Krishnan
13.R.Govardhan
14.R.Vasu
15.Mrs.Siva Suseela Pandian
16.K.Ramadoss

- 17.Mrs.Shanthi
 - 18.Madasami (alias) Selvam
 - 19.S.Kumaran Benefit Fund Ltd.,
Having office at No.125, Linghi Chetty Street
Chennai – 600 001
 - 20.Mrs.K.Unnamalai
 - 21.Shanthi
 - 22.Mrs.S.Lakshmi
 - 23.J.Ramesh
 - 24.J.Pannerselvam
 - 25.Mrs.S.Saroja
 - 26.Mrs.K.Vaidheki
 - 27.V.Parthiban
 - 28.Mrs.Pauibe Anjali
 - 29.S.Jency
 - 30.S.Nancy
 - 31.V.Kalaivanan
 - 32.V.Kalaiarasi
 - 33.Mrs.Bagyalakshmi
 - 34.Mrs. Mala
 - 35.Ravi
 - 36.Balaji
 - 37.K.Akila
 - 38.K.Kabilan
 - 39.Selvi K.Deepika (Minor)
D/o.Late Kumar
Rep. By mother & Next Friend
Smt.K.Akila
- ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 05.03.2016 in I.A.No.4 of 2016 in O.S.No.1709 of 1993 on the file of the learned District Munsif, Tambaram.

For Petitioners : Mr.J.R.K.Bhavanantham

ORDER

The plaintiffs in O.S.No.1709 of 1993 on the file of the District Munsif, Tambaram are the petitioners in the present revision. The suit came to be filed for permanent injunction against two persons arraying them as Defendants 1 and 2. Thereafter, more defendants were impleaded as defendants making the tally of the defendants to 41. Out of 41 defendants, two defendants, who figured as Defendants 2 and 3, are reported dead. The plaintiffs has not chosen to take steps to implead the legal representatives of the deceased second defendant on the premise that he died as a Bachelor and no legal representative was found. However, the plaintiffs also failed to follow the procedure for impleading the Advocate General in such case. So far as the third defendant is concerned, the plaintiffs are not in a position to state the date of death or the particulars of the legal representatives. Hence, they filed an application I.A.No.4 of 2016 in the above said O.S.No.1709 of 1983 under Order XXII Rule 4(4) CPC praying for an order exempting them from impleading the legal representatives of the deceased third defendant. The learned trial Judge, after hearing, dismissed the said application by the impugned order dated 05.03.2016. It is as against the said order, the present

Civil Revision Petition has been filed.

2. The matter stands listed today for admission. Mr.J.R.K.Bhavanantham, learned counsel for the petitioners would submit that since the third defendant, after entering appearance through a counsel, did not file a written statement and the plaintiffs were not aware of his death and they were also not aware of the particulars of his legal representatives, the plaintiffs should be exempted from taking steps to implead the legal representatives of the deceased third defendant.

3. The learned counsel for the petitioners would submit that when a party defendant fails to file a written statement or after filing such a written statement, fails to contest the case, then the Court may exempt the plaintiff from impleading the legal representatives of such defendant on his death and that the case can be permitted to be proceeded with against the deceased defendant also. In support of his contention, learned counsel for the petitioners relied on the judgment of the Hon'ble Supreme Court in ***Sushil K Chakravarty Vs. Tej Properties Private Limited*** reported in ***(2013) 9 Supreme Court 642***.

4. This Court is not in a position to understand how the learned

counsel for the petitioners places reliance on the above said judgment of the Hon'ble Supreme Court in support of his contention. In the case that went before the Supreme Court, the defendant, after filing written statement, failed to contest the case and remained absent leading to the passing of an order setting him *ex parte* and a trial was conducted *ex parte* against him. After he was set *ex parte* and the case was proceeded *ex parte*, he failed to apply for setting aside the *ex parte* order and he did not appear in the Court to contest the case from the date of such later appearance. Under the said circumstances alone, the Hon'ble Supreme Court held that the trial Court passed a conscious order under Order XXII Rule 4(4) CPC exempting the plaintiff from impleading the legal representatives of the defendant who remained *ex parte* till his death.

5. The facts of the case on hand are different from the facts of the case that went before the Supreme Court. In the case on hand, the third defendant entered appearance through counsel but written statement was not filed. It is not the case of the plaintiffs that the third defendant was set *ex parte* consequent to her failing to file written statement. As she was very much shown as the contesting party, there shall be no question of attraction of Order XXII Rule 4 (4) CPC. The petition seeking exemption seems to have been filed on a

misconception regarding the scope of the said provision. The very fact that the counsel who filed vakalat for the particular defendant, who is no more, expressed his inability to get the particulars of legal representatives shall not relieve the plaintiffs of their duty to implead the legal representatives if they want a decree binding on the estate of the deceased defendant.

6. Learned counsel for the revision petitioners, during the course of the argument before this Court, submitted that after the filing of the application for exemption, they got the particulars of the legal representatives of the deceased third defendant, but they were not able to find out their present address. The inability to find out their present address shall not be the ground on which one can be granted exemption from taking steps to implead the legal representatives of the deceased defendant. The plaintiffs have to take steps to implead the legal representatives of the deceased defendant, at least showing their last known address. In stead of doing it, the petitioners seem to have caused a delay by filing such unnecessary petition before the trial Court and also filing the present civil revision petition wasting the precious time of this Court. This Court does not find any defect or infirmity or wrong exercise of jurisdiction by the trial Court in the order challenged in the Civil

Revision Petition. There is no merit in the revision petition and the same deserves dismissal. Though it is a fit case in which the Court can impose a cost, because of the plea made by the learned counsel for the petitioners, this Court refrains from doing so.

In the result, the civil revision petition is dismissed. However, it is open to the petitioners/plaintiffs to file necessary petitions for impleading the legal representatives, setting aside abatement and to condone the delay in filing such petition to set aside abatement. If such petitions are filed, the trial Court shall consider them on their own merit without being influenced by any of the observations made in this order. No costs. Consequently, the connected miscellaneous petition is closed.

25.04.2016

Index: Yes/No
Internet: yes/No
gpa

P.R.SHIVAKUMAR.J.,

gpa

To

The District Munsif
Tambaram

C.R.P (PD) No.1282 of 2016 &
C.M.P.No.7176 of 2016

25.04.2016