

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated : 18.11.2016**

CORAM

**THE HON'BLE MR. JUSTICE T.MATHIVANAN**

**C.R.P (PD).No.2426 of 2013**

**&**

**M.P.No.1 of 2013**

1.B.Lakshmi Narasiman

2.B.Dhanalakshmi

...Petitioners

**Vs.**

1.Mrs.Padmini

2.Mrs. Padma

3.Mr.B.Lakshmi Thirumal

4.Mohana Lakshmi

... Respondents

Civil Revision Petition filed Article 227 of the Constitution of India against the judgment and decree dated 10.06.2013 in I.A.No.740 of 2013 in O.S.No.504 of 2004 on the file of the Court of Additional District Munsif, Alandur.

For Petitioners : Mr.R.T.Shyamala

For Respondents : Mr.M.Duraimurugan for R1, R3 & R4

No appearance for R2

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**JUDGMENT**

The order dated 10.06.2013 and made in the application in I.A.No.740 of 2013 in the suit in O.S.No.504 of 2004 is under challenge

in this revision. The revision petitioners are the legal representatives of the deceased first defendant.

2. It is brought to the notice of this Court that the suit in O.S.No.504 of 2004 was filed by the plaintiff Padmini as against the defendants 1 and 2, originally seeking the relief of declaration, recovery of possession as well as mandatory injunction. Thereafter, the first defendant had died on 28.04.2009. For the purpose of impleading his legal representatives, an application in I.A.No.558 of 2009 was originally filed and that petition was allowed and in pursuant to the order passed in that application, the defendants 3 and 4 were impleaded as his legal representatives.

3. Subsequently, the present petition in I.A.No.1048 of 2012 was filed by the plaintiff to implead her son and daughter as the legal heirs of the first defendant as she had claimed that she is also the wife of the deceased first defendant. Both the petitions were allowed and the son and daughter of the plaintiff viz., Mr.B.Lakshmi Thirumal and Ms.B.Dhanalakshmi were impleaded as the defendants 5 and 6. After their impleadment, they have filed their respective written statements. Prior to their inclusion, the trial proceedings were commenced and after the completion of evidence of plaintiff's side, DW1 was also examined.

4. At that time, the revision petitioners/defendants 5 and 6 in the suit had filed petitions in I.A.No.740 of 2013 under Order 18 Rule 17 CPC to recall DW1 for the purpose of cross-examination and another application in I.A.No.741 of 2013 to re-open the defendants' side evidence. I.A.No.741 of 2013 is still pending and the application in I.A.No.740 of 2013 was dismissed by the learned trial Judge. Having been aggrieved by the order of dismissal dated 10.06.2013, the present revision is filed by the defendants 5 and 6.

5. It is to be noted that the revision petitioners were allowed to be impleaded in the suit as defendants 5 and 6. They were also allowed to file their written statements. Only for the purpose of cross-examination of DW1, they happened to file two applications in I.A.Nos.740 and 741 of 2013. Having been allowed them to be impleaded and file their written statement, it is just and necessary that they should have been given an opportunity to cross-examine DW1. Otherwise, the purpose of their impleadment as defendants 5 and 6 would be frustrated. On this line, this Court is of the view that the order of the learned trial Judge is perverse in nature and is liable to be set aside.

Accordingly, the revision petition is allowed and the impugned order dated 10.06.2013 is set aside and the application in I.A.No.740 of

2013 is allowed. The trial Court is directed to give an opportunity to the revision petitioners to cross-examine DW1 and thereafter the suit shall have to be disposed of after framing additional issues, if necessary, based on the written statement filed by the revision petitioners, within a period of two months from the date of receipt of a copy of this order. No costs.

**18.11.2016**

Index: Yes/No  
Internet: Yes  
gpa

To

The Additional District Munsif  
Alandur

**T.MATHIVANAN.J.,**

gpa

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