

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2016

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.R.P.(Npd) No.975 of 2016

and

C.M.P.No.5506 of 2016

Mr.R.Sundar

... Petitioner

Vs.

1. Mr.R.Viswanathan

2. V.Saraswathi

3. C.Meena

4. T.Srinivasan

5. Ganesh Srinivasan

6. Anantha Ram Srinivasan

... Respondents

Civil Revision Petition filed under Article 115 of the Civil Procedure Code to set aside and reverse the order dated 19.11.2015 in I.A.No.9136 of 2015 in O.S.No.3046 of 2000 passed by the learned XIII Assistant City Civil Court, Chennai.

For Petitioner : Mr.S.Arivazhagan

For respondent : V.V.Sairam

ORDER

This Civil Revision Petition has been filed against the order dated 19.11.2015 passed in I.A.No.9136 of 2015, in O.S.No.3046 of 2000 by the learned XIII Assistant Judge, City Civil Court, Chennai, allowing the application filed for appointment of an Advocate Commissioner to inspect the suit property and to divide

the same by metes and bounds.

2. The suit in O.S.No.3046 of 2000 has been filed by the first respondent herein against one Jeyalakshmi(D1), Saraswathi(D2), Sundar(D3) and Meena(D4) seeking for the relief of partition of the plaintiff's 1/5th share.

3. It is alleged that Jeyalakshmi died on 13.12.2011. The legal representatives of the deceased first defendant, are stated to be Srinivasan, Ganesh Srinivasan, Anantha Ram Srinivasan, who are shown as petitioners in the application in I.A.No.9136 of 2015, seeking to appoint an Advocate Commissioner to demarcate the suit property.

3.1. When they were shown as legal representative of the deceased first defendant, the respondents raised an objection stating that the procedure to be followed in bringing the legal representatives on record has not been followed. This objection was not considered by the appellate court and the parties were permitted to remain on record. Challenging the same, this Revision Petition has been filed by the third defendant.

4. The main contention of the learned counsel for the Revision Petitioner is that no legal heir certificate has been filed so as to prove the status of the persons, as the legal representative of the deceased Jeyalakshmi.

5. The learned counsel for the respondent has submitted that the legal heir certificate which is issued in the State of Karnataka is only termed as family tree and not named as legal heir certificate and the family tree is produced. A perusal of the document show that the respondents 4 to 6 are the legal representatives of the deceased.

6. The learned counsel for the revision petitioner would submit that the application ought to have been filed to recognize the petitioners in I.A.No.9136 of 2015 as legal representatives of the deceased Jeyalakshmi and that procedure has **not been followed by the petitioners.**

7. The learned counsel for the respondent would relied upon a decision of this Court in *Amsavalli (died) and others Vs Sarangabani* reported in **2016(1) CTC 61**. In which it has been stated as follows:

“ The law on this subject was settled by this Court precisely one hundred and thirty four years before viz., in Ramananda Sastri Vs. Minachi Ammal, 1881 (3) Mad 236, wherein the Division Bench has held as follows:

“The provisions of Order 22, do not apply where a party dies after a Final Decree has been passed. If a plaintiff sues and dies after his suit has been dismissed, his legal representative may appeal from the decree without making any application to be brought on the record in his place”.”

“ Thus, the decision of the Division Bench of this Court in Ramananda Sastri Case(cited supra) has been followed by many other High Courts, thereby making it clear that if an appeal has to be filed by the legal representatives of a party to the decree of the lower Court, who dies after the date subsequent to the passing of the decree, the legal representatives can straightaway file an appeal without any petition either to accept the cause title or to recognise them as the legal representatives of the deceased. However, they have to make a statement in the appeal Memorandum as to how they are the legal representatives of the

decreased. Though that is suffice for the Court to entertain the appeal, *if there is any dispute in respect of the correctness of the said claim made, it can be raised during the hearing of the appeal and the said issue shall be decided after hearing both the parties later on.*”

8. In the very same judgment, it has been indicated that if there is any dispute in respect of the correctness of the said claim made, it can be raised during the hearing of the appeal and the said issue shall be decided after hearing both the parties.

9. In the light of the reported decision, liberty is given to the respondent to raise the issue regarding correctness of the claim made in the petition regarding legal status, the Court will decide after hearing both parties.

This Civil Revision Petition is disposed of accordingly with the above directions. No costs.

26.04.2016

mrp/arr

To

The XIII Assistant City Civil Court, Chennai.

S.VIMALA,J.,

mrp/arr

C.R.P.(Npd) No.975 of 2016
and
C.M.P.No.5506 of 2016

26.04.2016