

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M. DURAISWAMY

C.R.P.(PD).No.1158 of 2017
and C.M.P.No.5518 of 2017

John Peter

... Petitioner

Vs.

1.Arumugam

2.Rajeshwari

3.Buvanashwari

4.Minor Vasanthamalika

5.Minor Dhanush

(R4 & R5 rep by natural guardian mother)

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 07.10.2016 passed in I.A.No.470 of 2015 in O.S.No.22 of 2012 on the file of the Sub Court, Neyveli.

For Petitioner : Mr.P.Paramasiva Doss

For Respondents : Mr.V.Sundarraman

ORDER

Challenging the order passed in I.A.No.470 of 2015 in O.S.No.22 of 2012 on the file of the Sub Court, Neyveli, the plaintiff has filed the above Civil Revision Petition.

2. During the pendency of the suit, the sole defendant viz., Sivasankar had died and thereafter, the plaintiff filed an application in I.A.No.470 of 2015 under Order 22 Rule 4 of the Civil Procedure Code to bring on record the legal representatives of the deceased defendant. In the affidavit filed in support of the petition, the plaintiff has stated that the defendant had died on 15.06.2015. The 3rd respondent filed her counter stating that the defendant viz., Sivasankar had died on 14.07.2015, leaving behind Arumugam, Bhuvaneswari, minor Vasanthamaliya and minor Dhanush as the surviving legal representatives of the deceased Sivasankar. In the petition filed before the trial Court, the plaintiff has mentioned the 4th respondent's name as Vasanthamalika instead of Vasanthamaliya.

3. The learned counsel appearing for the respondents submitted that the 2nd respondent viz., Rajeshwari is no more.

4. Even taking into consideration the date mentioned by the 3rd respondent with regard to the death of Sivasankar as 14.07.2015, since the petition has been filed on 31.08.2015 itself, it is not out of time and the suit will abate only after the expiry of 90 days time.

5. However, since the cause title needs amendment, I am of the view that the fair and decreetal order passed by the trial Court can be set aside and the matter may be remitted to the trial Court for fresh consideration. The reasoning given by the trial Court for dismissing the application that the application has been filed by the plaintiff only to drag on the proceedings cannot be accepted. The defendant had died only on 14.07.2015 and the petition to bring on record the legal representatives has been filed as early as on 31.08.2015. The findings of the trial Court are liable to be set aside. Accordingly, the same are set aside.

6. The revision petitioner/plaintiff is given liberty to file appropriate application before the trial Court for amending the cause title by deleting the name of the 2nd defendant and amending the name of the 4th respondent. The plaintiff shall file an application within two weeks from the date of receipt of a copy of this order. It is open to the legal representatives of the deceased defendant to file their counter and oppose the application. The trial Court is directed to decide the application afresh, after carrying out the necessary amendment sought for by the plaintiff within three weeks from the date of filing of the counter.

7. With these observations, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
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28.03.2017

To

The Sub Court,
Neyveli.

M. DURAISWAMY, J.

va

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