

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.06.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) Nos.110 and 111 of 2014

Neethi Maircar @ Kasim Maircar : Petitioner
versus

Mehabub Devi (died)

1.Mohamed Batcha
2.Habbebu Nisha : Respondents

PRAYER: C.R.P.No.110 of 2014 filed against the order dated 25.10.2013, in I.A.No.400 of 2013 in O.S.No.428 of 2012 on the file of the Principal District Munsif, Karaikal.

C.R.P.No.111 of 2014 filed against the order dated 31.10.2013, in I.A.No.402 of 2013 in I.A.No.591 of 2012 in O.S.No.428 of 2012 on the file of the Principal District Munsif, Karaikal.

For petitioner :: Mr.Sai Krishnan
for M/s.Sai Bharat and Ilan

For respondents :: Mrs.G.Sumithra

COMMON ORDER

These two revision petitions are directed against the order allowing the applications filed by the respondents to implead them as plaintiffs 2 and 3 in O.S.No.428 of 2012.

2. The suit in O.S.No.428 of 2012 was filed by Mrs.Mehabub Bevi for injunction against the petitioners. During the currency of the suit, plaintiff died. The respondents filed application in I.A.Nos.400 and 402 of 2013 for impleading them as parties in the suit as well as in the interim application. The applications were allowed by the Trial Court notwithstanding the objection raised by the petitioner that sufficient proof was not produced by the respondents to prove the relationship. Feeling aggrieved, the petitioner is before this Court.

3. Heard the learned counsel for the petitioner. I have also heard the learned counsel for the respondents.

4. The respondents claimed that they are the legal heirs of Mrs.Mehabub Bevi, the plaintiff in O.S.No.428 of 2012. Though the respondents claimed that there is a fatwa indicating the relationship of the parties, no such document was produced before the Trial Court. The Trial Court allowed the application under Order 22 Rule 3 of CPC and impleaded the respondents as plaintiffs 2 and 3 in the civil suit as well as in the interlocutory application.

5. Since the petitioner disputed the status of the respondents as the legal representatives of the deceased plaintiff, the Trial Court was expected to consider the said issue in the light of Order 22 Rule 5 CPC. No such

effort was taken by the learned District Munsif. Even the so called fatwa was not produced before the Trial Court. The Trial Court simply allowed the application without considering the merits of the matter including the contention taken by the petitioner that the respondents are not the legal representatives. I am therefore of the view that the impugned order deserves to be set aside.

6. In the result, the order dated 25 October 2013, in I.A.No.400 of 2013 is set aside. Similarly, the order dated 31 October 2013, in I.A.No.402 of 2013 in I.A.No.591 of 2012 is also set aside. The matter is remitted to the Trial Court for fresh consideration.

7. The respondents are given liberty to file documents before the Trial Court to prove that they are the legal representatives of the deceased plaintiff. The learned District Munsif is directed to decide the matter afresh taking into consideration the pleadings and documents filed by the respective parties. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

8. The civil revision petitions are allowed as indicated above. No costs. Consequently, M.P.No.1 of 2014 is closed.

28.06.2017

Index:Yes/no
tar

K.K.SASIDHARAN, J.
(tar)

To
The Principal District Munsif, Karaikal

C.R.P.(P.D.) Nos.110 & 111/2014

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