

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2017

CORAM :

THE HONOURABLE MR. JUSTICE M. GOVINDARAJ

C.R.P.(NPD) No.2332 of 2017

1.Jayalakshmi
2.Saravana Kumar
3.Minor Sampath Kumar
4.Jansirani (Died) ... Petitioners

Vs.

1.Madhu @ Manomani
2.Vetriselvi
3.Selvan
4.Ramesh
5.Santhalakshmi
6.Jayakumar
7.The Chief Educational officer,
Office at Ganesa Colony,
Bye-pass Road,
Dharmapuri – 636 701.
8.The Assistant Educational Officer,
Office at Railway Station Road,
Dharmapuri Taluk & District.
9.The Special Officer,
Dharmapuri District Co-operative Sugar Mills,
K.K.347, Palacode,
Dharmapuri District.
10.The Branch Manager,
Indian bank,
Dharmapuri.

- 11.The Branch Manager,
State Bank of India,
Dharmapuri.
- 12.The Divisional Manager,
Life Insurance Corporation of India,
Coimbatore.
- 13.The Branch Manager,
Life Insurance Corporation of India,
Dharmapuri Taluk & District.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order of the Principal District Judge's Court at Dharmapuri dated 25.04.2017 made in Un-numbered I.A. of 2017 in C.R.C.No.1 of 2003 in A.S.No.42 of 1997 and direct the Principal District Court to number the said application.

For Petitioners : Mr.P.Valliappan

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ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 25.04.2017, passed in Un-numbered I.A. of 2017 in C.R.C.No.1 of 2003 in A.S.No.42 of 1997, by the learned Principal District Judge, Dharmapuri and for a consequential direction to number the said application.

2.The petitioners are the second wife and children of one K.M.Kuppan. The case of the petitioners is that they sought for their share in the terminal benefits of the deceased K.M.Kuppan. The trial

Court has declared that the children are entitled to a share in the terminal benefits and the second wife is not entitled to the terminal benefits, as the second marriage is not recognized by law.

3. On appeal, the appellate Court has declared that the children of deceased employee are entitled to the benefits on all aspects including which it was rejected by the trial Court. During the pendency of the final decree proceedings, one of the children namely Jhansirani, of the first petitioner passed away viz. fourth petitioner. The fourth petitioner is an unmarried woman and therefore, the first petitioner is the legal-heir. Since the first petitioner is already on record, a memo was filed on behalf of the petitioners bringing the fact to the knowledge of the Court. When the first petitioner is the legal-heir of the deceased fourth petitioner, who is already on record, it is appropriate to decide the issue, by giving notice to the other side. But in the instant case, the trial Court has not even numbered the I.A. and dismissed the application, on an impression that the correction of the decree can be made only for clerical and arithmetical errors and not otherwise.

4. The learned counsel for the petitioners would rely on a judgment of the Hon'ble Supreme Court in **AIR 2008 SUPREME**

COURT 225 in Niyamat Ali Molla Vs. Sonargon Housing Co-operative Society Ltd. and others, and contended that the exercise of powers and jurisdiction under Section 152 as also under Section 151 of the Code of Civil Procedure, cannot be exercised in a pedantic manner. Relying on the said judgment, the learned counsel would submit that the Court below should have considered the judgment in numbering the interlocutory application. Since the sole legal heir of the fourth petitioner is already on record and a memo has already been filed, it is proper to decide the matter after issuing notice to the other side. Rejection of the petition in the unnumbered stage is not correct. Hence the order of the trial Court passed in unnumbered I.A.No.--/2017 in C.R.C.No.1 of 2003 in A.S.No.42/1997 dated 25.04.2017 is set aside.

5.Considering the facts and circumstances of the case, a direction is issued to the Court below to number the Unnumbered I.A.No.--/2017 and decide the matter on merits. This exercise shall be done within a period of three months from today.

6.The Civil Revision Petition is disposed of accordingly.

No costs.

12.07.2017

ah/tk

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

To

- 1.The Principal District Judge
Dharmapuri.
- 2.The Chief Educational officer,
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M.GOVINDARAJ, J.



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