

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2017

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.P.D.No.4444 of 2014
and M.P.No.1 of 2014

1. J.Kalaivani
2. Minor a.Usha
Rep by her mother and
natural guardian J.Kalaivani .. Petitioners

-Vs.-

P.Thangaraj .. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 23.07.2014 and made in I.A.No.3246 of 2006 in O.S.No.7282 of 2012 on the file of the XVIII Assistant City Civil Court, Chennai and to set aside the same.

For petitioners ... Mr.M.Samuel Raja

For respondent ... Mr.M.Ashok - No Appearance

O R D E R

This revision petition is preferred by the defendants challenging the order allowing an application under Order VI Rule 17 C.P.C filed by the plaintiff.

2. The suit is filed by the respondent herein for permanent injunction restraining the defendants from preventing the plaintiff to have free ingress and egress in respect of the suit property.

3. The suit is based on the fact that the plaintiff is the father of the first defendant's husband. As the legal heirship of the plaintiff was denied, he is now seeking for declaration of status that he is the legal heir of the deceased P.T.Anand.

4. The plaintiff's son was P.T.Anand, who pre-deceased him and the defendants 1 and 2 are the wife and child of the deceased P.T.Anand. The suit is filed with respect to the suit property for a bare injunction. As the legal heirship of the plaintiff is challenged by the defendants, the amendment is sought to

include a prayer for declaration that he is the legal heir of his son deceased P.T.Anand. The said application was allowed and the same is challenged by the defendants in this revision.

5. Heard the learned appearing for the petitioners and the learned counsel for the respondent.

6. As per Section 8 of the Hindu Succession Act, the father is not a class-I heir. Only in the absence of Class-I heir, the Class-II can be considered. The defendants are the widow and the daughter of the pre-deceased son, who are Class-I heirs. So, as per the statute, when it is crystal clear that the plaintiff cannot be the legal heir of his pre-deceased son, the question of amendment does not arise. Therefore, the order passed by the learned trial Judge is without application of mind without reference to the statute. Hence, the same is liable to be set aside.

PUSHPA SATHYANARAYANA.J

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7. Accordingly, the impugned order of the trial Court is set aside and the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

07.02.2017

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Index: Yes/No

Internet:Yes/No

To

The XVIII Assistant City Civil Court,
Chennai

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