

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.04.2017**

CORAM:

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

C.R.P.(N.P.D.) No. 4808 of 2014 & M.P.No.1 of 2014 and
C.R.P.(P.D.) No. 4809 of 2014

B.K.Harirajan

... Petitioner in both the petitions

Vs

1. Kamala
2. K.Lakshmi
3. Gomathi
4. Amerandra Rao
5. Muktha
6. Kiranmai

... Respondents in both the petitions

Prayer:- Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal order dated 17.07.2014 made in I.A.Nos.312 and 313 of 2014 respectively in O.S.No.57 of 1998 on the file of District Munsiff, Ponneri.

For Petitioner : Mr.V.Manoharan
(in both the petitions)

For Respondents : Mr.R.Krishnaswamy
(in both the petitions)

COMMON ORDER

These two revision petitions are directed against the order dated 17 July, 2014 in I.A.Nos.312 and 313 of 2014, allowing the applications filed by the respondents to set aside the ex parte order passed against the deceased second defendant and to implead them as his legal representatives in O.S.No.57 of 1998.

2. The petitioner filed a suit in O.S.No.57 of 1998 against the predecessor-in-interest of the respondents and others before the District Munsif Court, Ponneri, praying for a decree of declaration and injunction. In the said suit, the predecessor-in-interest of the respondents filed written statement. It so happened that subsequently, the defendants failed to appear before the Trial Court and the same resulted in passing an ex parte decree on 5 February, 2007.

3. Subsequently, other defendants filed petition before the Trial Court and resultantly, ex parte decree was set aside. The husband of the first respondent and the father of other respondents, died after passing the ex parte decree. When the ex parte decree was set aside at the instance of the other defendants, the respondents filed application to implead them as parties to the suit and to set aside the ex parte decree passed against their predecessor-in-interest, who was second defendant in the suit. The learned Trial Judge, having found that the entire decree was set aside allowed the applications. Feeling aggrieved, the petitioner is before this Court.

4. The learned counsel for the petitioner contended that there was an ex parte decree passed against the second defendant. There was no action taken by the second defendant to set aside the ex parte decree and as such, the present applications filed by his legal representatives are not maintainable.

5. The learned counsel for the respondents justified the order passed by the learned District Munsif, Ponneri. According to the learned counsel, the suit was one for declaration and injunction and as such, the entire matter is at large before the Trial Court. The Trial Court set aside the ex parte decree, pursuant to the petition filed by the defendants 9 to 12. The learned counsel contended that the second defendant died after passing the final decree and as such, it was incumbent upon the petitioner to file application to implead the legal representatives after the restoration of the suit in O.S.No.57 of 1998.

6. The only question that arises for consideration is as to whether the learned Trial Judge was correct in allowing the applications filed by the legal representatives of the deceased second defendant to implead them as parties to the suit and set aside the ex parte order passed against their predecessor-in-interest.

7. The suit in O.S.No.57 of 1998 is a comprehensive suit for declaration and injunction. The suit was contested by all the defendants including the predecessor-in-interest of the present respondents. It is true that the second defendant was set ex parte during the currency of the suit and thereafter, ex parte decree was passed on 5 February, 2007. It is a matter of record that ex parte decree was set aside at the instance of defendants 9 to 12 and the suit is now pending before the Trial Court.

K.K.SASIDHARAN,J.

(svki)

8. The second defendant, after passing the ex parte decree died. Since the suit is restored to file, necessarily, the legal representatives of the second defendant should be brought on record notwithstanding the fact that the said defendant was set ex parte earlier. The Trial Court was perfectly correct in its observation that the respondents are necessary parties in the suit in O.S.No.57 of 1998 and they have made out a case to set aside the ex parte decree passed against the second defendant. I am therefore of the view that there is no merit in the contention taken by the petitioner.

9. In the up shot, I dismiss the Civil Revision Petitions. No costs. Consequently, connected miscellaneous petition is closed.

28.04.2017

svki

To

The District Munsiff, Ponneri.

**C.R.P.(NPD) Nos. 4808 and
4809/2014**

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