

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(NPD)No.1023 of 2004
and
C.M.P.No.7870 of 2004

1.K.I.Syed Ahmed
2.Minor Sithi Sabiha Sabarin .. Petitioners
(Rep. by guardian and next Friend
and father Syed Ahmed)
(Petitioners 1 and 2 by Power Agent Ahmed Moideen)

Vs.

1.N.M.Rahamathunissa
2.K.S.Rahima Siddicka .. Respondents

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., against the order and decretal order dated 16.07.2003 made in I.A.No.507 of 2002 in O.S.No.511 of 2000, on the file of the Subordinate Court, Tiruvarur.

For Petitioners : Mr.Srinath Sridevan

For Respondents : Mr.Vu.Va.Kathiresan
No.1

O R D E R

The revision petitioners are proposed plaintiffs 2 and 3 and legal heirs of the deceased plaintiff namely S.A.Jagbar Nachia in O.S.No:511 of 2000 on the file of the Sub- Court, Thiruvarur.

2.It is the case of the revision petitioners that the 1st petitioner's wife namely Jagabar Nachia filed a suit against the 1st respondent herein in O.S.No.511 of 2000 on the file of the Sub- Court, Thiruvarur for recovery of money and in default to pay the suit amount to bring the suit property through Court auction sale.

3.It is the further case of the revision petitioners that pending suit, the sole plaintiff died on 05.07.2002 and therefore in order to bring her heirs, the petitioners herein filed an application in I.A.No. 507 of 2002 seeking to implead

themselves as plaintiffs 2 and 3. The said application was opposed by the 1st respondent herein, contending that it is for the revision petitioners to prove that they are the legal heirs of plaintiff S.A. Jagabar Nachia as per Mohamadin Law by adducing oral and documentary evidence.

4. Further the 1st petitioner herein should have obtained permission to act as guardian of the minor 2nd petitioner herein from concerned Principal District Court.

5. It is further averred by the 1st respondent herein that the provision of law mentioned in the petition is inapplicable to the present application and liable to be dismissed.

6. The Learned Trial Judge after considering rival submissions dismissed the application by holding that the revision petitioners failed to produce legal heirship certificate of the deceased plaintiff and also guardianship certificate from the competent District Court. Challenging the same the present Civil Revision Petition is filed.

7. I heard Mr. Srinath Sridevan, learned counsel for the petitioner and Mr. Vu. Va. Kathiresan, learned counsel for the respondent and perused the entire materials available on record.

8. This Court having gone through the impugned order under challenge in this Civil Revision Petition discovers that revision petitioners have not produced the legal heir certificate to the deceased sole plaintiff. According to the petitioners, the 1st petitioner is the husband, 2nd petitioner is daughter and 2nd respondent herein is daughter of the deceased plaintiff.

9. It is seen that the Learned Trial Judge dismissed the application on the ground that the 1st petitioner herein failed to get permission from the District Court that he is legally entitled to act as the guardian of minor 2nd petitioner. In the considered opinion of this Court the said finding of the Trial Court is erroneous one. The present application is to bring on record such that they are the representatives/legal heirs of the deceased sole plaintiff in the above suit. More so, no guardianship certificate has to be obtained from District Court in this regard.

10. It is true that the petitioners herein should have obtained legal heir certificate and produce the same before the Trial Court so as to establish the fact that they are legal heirs of deceased plaintiff. But the non production of legal heir certificate is not a ground to dismiss an application

sought to bring on record the legal representatives of the deceased sole plaintiff.

11.Apart from that the Learned Trial Judge dismissed the application filed by the revision petitioners citing erroneous mentioning of Provision that the application to be made is under Order 22, Rule 3 of CPC, whereas petition was found filed under Order 22, Rule 4 of CPC.

12.In as much as the above finding, this Court finds that it is well settled law that mere quoting wrong proposition of law cannot disentitle a party to get the appropriate relief.

13.For the forgoing reason, I am of view that the application filed by the revision petitioners is liable to be allowed and accordingly the same is allowed and revision petitioners shall be brought on record as plaintiffs 2 and 3 and the 2nd respondent herein as 2nd defendant in the above suit.

14.However, there shall be a direction to the plaintiffs 2 & 3 to prove themselves to be legal heir of the deceased sole plaintiff S.A.Jagbar Nachia by producing a Legal Heir Certificate at the time of trial of the suit.

15.With the above observation, this Civil Revision Petition is allowed and the parties are directed to bear their own cost, in other words there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

vs

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To
The Subordinate Judge,
Thiruvarur.

+1cc to Mr.Srinath Sridevan, Advocate SR.NO.12361

VD(CO)
sm:19.9.2018

C.R.P. (NPD)No.1023 of 2004
and
C.M.P.No.7870 of 2004