

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.26 of 2009

M.P.No.1 of 2009

Sharmila

.. Petitioner

Vs.

- 1.P.K.Kumarasamy
- 2.Sundaravalli
- 3.The District Educational Officer,
Tirupattur Taluk,
Vellore District.
- 4.The Assistant Education Officer,
Jolarpet,
Vellore District.
- 5.The District Educational Officer,
Vellore.
- 6.Karuna
- 7.Prema
- 8.Savithri
- 9.Thamaraiselvi
- 10.A.Rathinam
- 11.Navalakshmi
- 12.Sivakumar

.. Respondents

PRAYER: Civil Revision Petition filed Under Article 227 of the Constitution of India, against the fair and decretal order dated 26.11.2008 in I.A.No.313 of 2008 in O.S.No.341 of 1999 on the file of the District Munsif, Tirupattur.

For Petitioner : Mr.G.Rajan

For R1 : Mr.V.Jeevagiridharan

For R2 to R12 : No appearance

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 26.11.2008 in I.A.No.313 of 2018 in O.S.No.341 of 1999 on the file of the District Munsif, Tirupattur.

2. Petitioner is the plaintiff and respondents 1 to 9 are defendants 1, 3 to 6 and 8 to 11 in O.S.No.341 of 1999 on the file of the District Munsif, Tirupattur. The petitioner filed the said suit against the respondents 1 to 9 for permanent injunction against the respondents 1 and 2 from making any claim of benefit of one Vijayakumari from respondents 3 to 5 and for declaring that the petitioner is the legal heir. The deceased 2nd defendant in the suit, K.Rajamanickam filed written statement and was contesting the suit. The second defendant died and respondents 7 to 11 were impleaded as the legal heirs of the deceased second defendant. The

petitioner filed memo on 26.10.2006, pending suit stating that the 7th defendant died on 20.10.2006. The suit against the 7th defendant was dismissed on 11.12.2006 as the petitioner did not take any steps to implead the legal heirs of the 7th defendant. After conclusion of the trial, when the suit was posted for arguments, the petitioner filed I.A.No.313 of 2008 to condone the delay of 425 days in filing the petition to set aside the abatement caused against the death of the 7th defendant. According to the petitioner, she came to know about the legal heirs of the 7th defendant only at the time of filing of the petition and therefore, delay has occurred.

3. The respondents 1 and 12 filed separate counter affidavit and opposed the said application. According to them, the date of death and number of days of delay are not correct and it is not correct to state that the petitioner came to know the date of death of the 7th defendant only recently.

4. The learned Judge, considering the memo filed by the petitioner, date of death of the 7th defendant, dismissal of the suit against the 7th defendant and the failure of the petitioner to take steps to bring the legal heirs of the 7th defendant, dismissed the

application, holding that the petitioner has filed the application only to drag on the proceedings.

5. Against the said order dated 26.11.2008 in I.A.No.313 of 2018 in O.S.No.341 of 1999, the present Civil Revision Petition is filed by the petitioner.

6. Heard the learned counsel appearing for the petitioner and perused the materials available on record. Though notice has been served on the respondents 2 to 12 and their names are printed in the cause list, there is no representation either in person or through counsel.

7. From the materials available on record, it is seen that the petitioner filed memo in the year 2006, stating that the 7th defendant died and suit was dismissed in December, 2006 against the 7th defendant. The application filed by the petitioner to implead the legal heirs of the 7th defendant was in the year 2006 and the same was dismissed by the learned Judge on the misconception that the petitioner was aware of the date of death of the 7th defendant in the year 2006 itself and application filed by the

petitioner at the stage of the arguments was only to drag on the proceedings. The petitioner has filed the memo on 26.10.2006 about the death of the 7th defendant and stated that she was unaware of the legal heirs of the 7th defendant.

8. The learned counsel appearing for the first respondent submitted that the petitioner is the sister's daughter of the deceased of the 7th defendant and knowing fully well the details of the legal heirs of the deceased 7th defendant, she did not file the application.

9. The defendants 8 to 11 are the relatives of the 7th defendant. They have not filed any memo giving details of legal heirs of the 7th defendant. Considering the averments of the learned counsel appearing for the petitioner and first respondent that the petitioner are close relatives of the deceased 7th defendant and legal heirs of the 7th defendant have not filed any counter affidavit and in order to give an opportunity to the petitioner, the order passed in I.A is liable to be set aside. At the same time, the respondents are to be compensated.

10. In the result, the Civil Revision Petition is allowed and order passed in I.A is set aside on payment of a cost of Rs.500/- to the "Hon'ble Chief Justice Relief Fund, High Court, madras" within a period of 3 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

18.09.2017

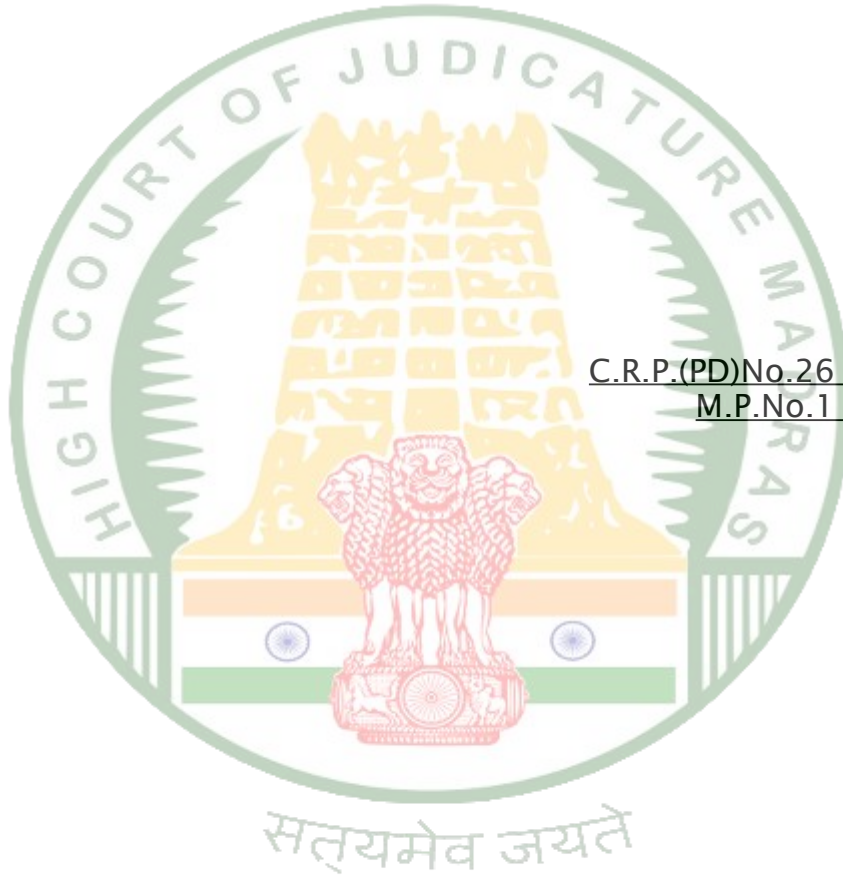
Index: Yes/No
gsa

To

- 1.The District Educational Officer,
Tirupattur Taluk,
Vellore District.
- 2.The Assistant Education Officer,
Jolarpet,
Vellore District.
- 3.The District Educational Officer,
Vellore.
- 4.The District Munsif,
Tirupattur.

V.M.VELUMANI,J.

gsa



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