

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.3666 of 2012
and
M.P.No.1 of 2012**

Saminathan

.. Petitioner

Vs.

1.Palanisamy @ Kattukoil Palanisamy

2.Rajammal

3.Ponnusamy

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decretal order dated 13.03.2012 passed in I.A.No.1543 of 2011 in O.S.No.21 of 2003, on the file of the District Munsif Court, Avinashi.

For Petitioner : Mr.K.Govi Ganesan

For Respondents : Mr.V.Anandhamoorthy (for R3)

No Appearance (for R1 and R2)

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decreetal order of the learned District Munsif Court, Avinashi made in I.A.No.1543 of 2011 in O.S.No.21 of 2003, dated 13.03.2012 by allowing this revision.

2.The revision petitioner as plaintiff filed a suit against the respondent herein in O.S.No.21 of 2003 before the learned District Munsif Court, Avinashi for declaration and permanent injunction. According to the revision petitioner, after the suit was filed, the 1st defendant died on 04.04.2011, leaving behind the 4th respondent herein as his legal heir to succeed his estate. The 1st defendant executed a sale deed infavour of 4th respondent herein on 08.12.06. In view of the said sale deed, the title and possession of the property conveyed to the 4th respondent. Since the 1st defendant in suit was died, the 4th respondent herein is to be brought on record as 4th defendant in the suit, otherwise the revision petitioner herein would suffer irreparable hardship.

3.The 4th respondent herein has resisted the said application by filling counter affidavit which was adopted by the respondents 2 and 3 herein. The revision petitioner originally filed a suit for permanent injunction and subsequently amended the plaint to include the relief of Mandatory Injunction. Hence he has no right to file the present application to implead the legal heir of deceased 1st defendant. Further the application is barred by limitation. The 4th respondent herein is not at all the necessary party to the suit and there is no cause of action for filling the present application. Hence he prayed for the dismissal of the application.

4.The learned trial judge upon hearing the arguments on either side dismissed the application filed by the revision petitioner under Order 22, Rule 4 C.P.C against which the present Civil Revision Petition is filed.

5.I have heard Mr.K.Govi Ganesan, learned counsel appearing for the petitioner and Mr.V.Anandhamoorthy, learned counsel appearing for the 3rd respondent and there is no representation on behalf of the respondents 1 and 2 and perused the entire records.

6. Upon considering the rival submission, this Court has to see whether the order dismissing the application to bring on record the legal heir of the deceased 1st defendant is warranted interference by this Court or not?

7. It is seen from records that the revision petitioner has filed a suit declaration and permanent Injunction against the defendants 1 to 3 / respondents 1 to 3 herein. Admittedly the 1st defendant in the suit died on 04.04.2011, leaving behind the 4th respondent herein as his legal heir. Therefore in order to bring on record the legal heir of the deceased the 1st defendant Chinnaiah Gounder, the plaintiff / revision petitioner has taken out an application in I.A.No.1543 of 2011 under Order 22 Rule 4 of C.P.C.

8. A bare perusal of the counter affidavit filed by the 4th respondent herein discloses that there is no denial with regard to the status of the legal representative. The counter affidavit of the 4th respondent seems to be a formal counter affidavit and the only ground raised by the 4th respondent is that the legal heir application is barred by limitation.

9. At this juncture, this Court will have to see the correctness of the order passed by the trial Court. It is true that the application to bring on legal representative of the deceased should be filed within 90 days from the date of death. In this case the 1st defendant died on 04.04.2011 and the revision petitioner ought to have taken steps to bring on record the legal representative of the deceased 1st defendant within a period of 90 days which has fallen on 04.07.2011. However, the petitioner has filed the application in I.A.No.1543 of 2011, on 30.08.2011 i.e. after the delay of nearly about 2 months, even then the application is not barred by limitation. The revision petitioner is having further period of 60 days time to bring on record the legal heir application along with application to set aside the abatement caused due to the death of the deceased 1st defendant as contemplated under Order 22 Rule 9 of C.P.C. The 5 month time has expired only on 04.09.2011. Therefore the learned judge has committed an error in dismissing the L.R. application by holding that the application is barred by limitation.

10. The other finding of the learned judge is correct to effect that the present application is required to be filed along with an application

under Order 22 Rule 9 C.P.C. However, the dismissal of L.R. application by the trial Court is not proper on the ground of non filing the set aside abatement application. The learned judge ought to have directed the revision petitioner to file an application to set aside the abatement caused to death of the deceased 1st defendant under Order 22 Rule 9 of C.P.C.

11. In view of the foregoing discussion, this Court is of the considered opinion that the order of the trial Court is liable to be set aside and accordingly it is set aside.

12. In the result: a) this Civil Revision Petition is allowed and the order and decree of the learned District Munsif Court, Avinashi made in I.A.No.1543 of 2011 in O.S.No.21 of 2003, dated 13.03.2012 is hereby set aside;

b) the revision petitioner is directed to file an application under Order 22 Rule 9 C.P.C within a period of two weeks from the date of receipt of order and on receipt of same, the trial Court is directed to dispose the same within a further period of four weeks, by giving notice to both the parties;

c)the trial Court is further directed to take up the suit on date to day basis without giving any adjournments to either parties, as the suit is of the year 2003 and to dispose the same within a period of three months. Both the parties are hereby directed to co-operate for early disposal of the suit. There is no order as to cost. Consequently, connected miscellaneous petition is closed.

23.02.2017

Note:Issue order copy on 02.08.2017

Internet:Yes

Index:Yes

vs

To

The District Munsif Court,
Avinashi.



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M.V.MURALIDARAN, J.

VS



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