

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.783 of 2015

C.Ramakrishnan

.. Petitioner

Vs.

1.K.Govindan @ Govindaswamy
(died on 13.04.2013)

2.G.Manonmani
3.G.Rajan
4.G.Vijayan
5.G.Murali
6.G.Kamal

.. Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decretal order dated 03.12.2014 made in I.A.No.19 of 2014 in O.S.No.1710 of 2013 on the file of the XVI Additional Court, Chennai.

For Petitioner : Mr.V.Ramana Reddy

R1 : Died

For R2 to R6 : No appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 03.12.2014 made in I.A.No.19 of 2014 in O.S.No.1710 of 2013 on the file of the XVI Additional Court, Chennai.

2. The petitioner is plaintiff and first respondent is defendant in O.S.No.1710 of 2013 on the file of the XVI Additional Court, Chennai. The petitioner filed said suit for specific performance of agreement of sale. The suit summons sent to the first respondent was returned with an endorsement as "door locked affixed". The private notice sent by the learned counsel for the petitioner through registered post with acknowledgement card was returned with an endorsement as 'dead'. On 31.01.2014, the petitioner filed I.A.No.19 of 2014 to bring on record the respondents 2 to 6, who are the legal representatives of the deceased first respondent.

3. According to the petitioner, after return of private notice, he verified with the other respondents about the death of the first respondent/sole defendant and obtained death certificate and filed the present application within the time limit from the date of his knowledge.

4. The respondents 3 to 6 filed counter affidavit and submitted that the present application to bring the legal representatives of the deceased first respondent on record is not maintainable. The petitioner has not filed application to condone the delay in filing petition to set aside the abatement and to set aside the abatement.

5. The learned Judge, considering the averments made in the affidavit, counter affidavit, materials available on record and the judgments relied on by the parties, dismissed the application.

6. Against the said order of dismissal dated 03.12.2014 made in I.A.No.19 of 2014 in O.S.No.1710 of 2013, the present Civil Revision Petition is filed by the petitioner/plaintiff.

7. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice was served on the respondents 2 to 6 and their names have been printed in the cause list, there is no representation on behalf of them either in person or through counsel.

8. From the impugned order of the learned Judge, it is seen that the petitioner came to know about the death of the deceased first respondent on 09.10.2013, when the private notice sent by him through his counsel was returned with an endorsement 'dead'. According to the petitioner, he filed an application to bring on record the respondents 2 to 6, who are the legal representatives of the deceased first respondent/sole defendant, within the time limit from the date of knowledge of death of the said defendant. This contention is not correct. The petitioner came to know about the death of the first respondent on 09.10.2013. He filed the present application only on 31.01.2014, which is beyond the time limit fixed for filing application to bring the legal representatives on record.

9. As per Order XXII Rule 4 C.P.C., when one of the defendants died, the plaintiff must file an application to implead the legal representative of the deceased defendant as party defendant. As per Order XXII Rule 4(3) C.P.C., if the plaintiff fails to file any application within the time limit prescribed, the suit shall abate against the deceased defendant. The time limit prescribed under Article 120 of the Limitation Act is 90 days from the date of death of the defendant. As per Article 121 of the Limitation Act, time limit to

set aside the abatement is 60 days. If the plaintiff fails to file application to bring the legal representative on record within 90 days, the suit will abate. The plaintiff has to file an application to set aside the abatement within 60 days from the date of abatement. If the plaintiff fails to comply with this time limit, he has to file application to condone the delay in filing the petition to set aside the abatement, application to set aside abatement and application to bring the legal representatives of the deceased on record.

10. In the present case, the sole defendant died on 13.04.2013. The petitioner came to know about the death of the defendant on 09.10.2013. The petitioner filed the present application to bring the legal representatives of the deceased first respondent on record on 31.01.2014. The petitioner has not filed any applications to condone the delay in filing petition to set aside abatement and application to set aside abatement. Further, as per Article 120 of the Limitation Act, the application to bring the legal representatives of the deceased defendant on record has to be filed within 90 days from the date of death of the defendant. In view of Article 120 of the Limitation Act, the contention of the learned counsel for the petitioner that he filed application within 90 days of

date of his knowledge of death, has no merits. The said contention is also contrary to the facts. The petitioner came to know about the date of death of the first respondent/sole defendant on 09.10.2013, but the present application was filed on 31.01.2014.

11. The learned Judge has properly considered Order XXII Rule 1 C.P.C. and Article 121 of the Limitation Act and dismissed the application by giving cogent and valid reason. There is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 03.12.2014.

12. In the result, the Civil Revision Petition is dismissed. No costs.

17.01.2018

Index : Yes/No

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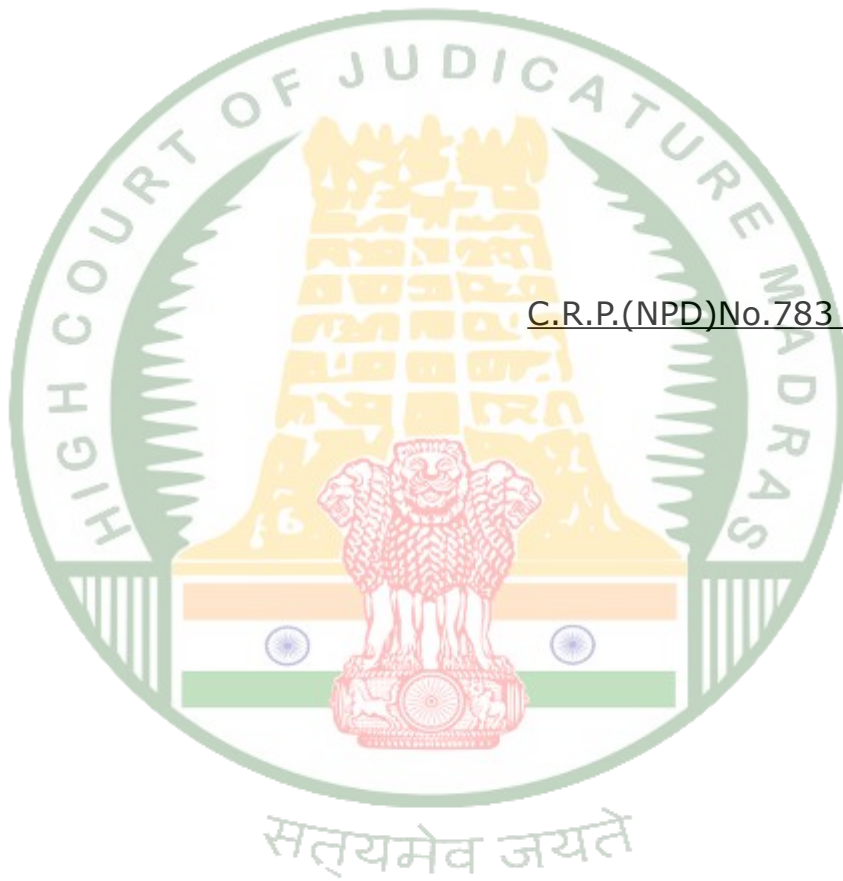
To

XVI Additional Judge, Chennai.

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V.M.VELUMANI, J.

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