

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2018

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

CRP.PD.No.3174 of 2016
and CMP.No.16137 of 2016

D.Sekar

.. Petitioner

Vs.

S.Kavya (Minor)
rep.by next friend & Guardian B.Ravi

..Respondent

PRAYER : The Civil Revision Petition is filed under Section 227 of the Constitution of India to set aside the order dated 20.07.2016 made in I.A.No.809 of 2015 in O.S.No.121 of 2011 on the file of the I Additional Principal Judge, Family Court, Chennai.

For petitioner : Mr.K.Harishankar

For Respondent : Mr.C.Deivasigamani

WEB ORDER COPY

This civil revision petition has been filed to set aside the order dated 20.07.2016 made in I.A.No.809 of 2015 in O.S.No.121 of 2011 passed by the learned I Additional Principal Judge, Family Court, Chennai.

2. According to the petitioner, the petitioner has filed the petition in F.C.O.P.No.1394 of 2001 on the file of the II Additional Principal Judge, Family Court, Chennai seeking dissolution of marriage. In the aforesaid petition, the respondent was set exparte and hence, exparte decree was passed by the Court below. Thereafter, the respondent has filed the application in I.A.No.147 of 2007 in F.C.O.P.No.1394 of 2001 on the file of II Additional Principal Judge, Chennai, to condone the delay of 1343 days in filing to set the exparte decree. The plaintiff has filed the suit in O.S.No.121 of 2011 on the file of the 1st Additional Principal Judge, Family Court, Chennai to cancel the exparte decree. In the meanwhile, the plaintiff died on 31.01.2015 leaving behind her daughter viz., Kavya, who is aged about 10 years, as her legal heir. Minor Kavya rep.by next friend and Guardian B.Ravi has filed the application in I.A.No.810 of 2015 in O.S.No.121 of 2011 on the file of the 1st Additional Principal Judge, Family Court, Chennai to appoint the petitioner viz., P.Ravi as next friend and guardian for the minor S.Kavya to sue on behalf of her in the above suit. Thereafter, the petitioner viz., Minor. Kaviya has filed the application in I.A.No.809 of 2015 to implead the legal heir of the deceased plaintiff viz., P.Rajalakshmi, the proposed plaintiff minor.Kavya, represented by next friend and guardian B.Ravi as plaintiff in the above suit and the same is pending. The petitioner herein has filed a memo by stating that the

plaintiff died on 31.01.2015 and the suit may be dismissed as abated. But the Court below has allowed the application in I.A.No.809 of 2015. Challenging the order passed by the Court below, the petitioner has filed the present civil revision petition before this Court.

3. The learned counsel for the respondent would submit that the said suit has become abated on the death of the plaintiff, thereafter, the respondent has filed the application to implead the minor Kavya as necessary party in the suit as the legal representative of the deceased plaintiff and the application to implead the minor.Kavya was allowed.

4. It is pertinent to note that the respondent has not filed any counter before the Court below, only memo has been filed. Therefore, whether any cause of action has arisen due to the death of the plaintiff and the suit has abated, has to decide at a later stage. It is open to the petitioner to file an appropriate application before the Court below, to raise the maintainability of the suit, if so advised.

6. Hence, there is no reason to interfere with the order passed by the Court below. Therefore, this civil revision petition fails and the same is

D.KRISHNAKUMAR,J.

kkd

dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12.02.2018

Index : Yes/No
Internet: Yes/No
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To

The I Additional Judge,
Family Court, Chennai.



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