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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 19.01.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (NPD) (MD) No.104 of 2018

and

C.M.P. (MD) No.468 of 2018

1.Thirumalaiammal

2.Kannan

... Petitioners / Respondents /
Defendants

vs.

1.Chinnathaiammal

Kaliammal (Died)

Mariammal (Died)

Thirumalaiammal (Died)

Mahalakshmi (Died)

2.Gurusamy

3.Subramani

4.Muthulakshmi

5.Sakthivel

6.Chinnaraj

7.Poonkodi @ Jeyapriya

8.Udhayaprakash

... Respondents / Petitioners /
Plaintiffs

PRAYER: Petition filed under Section 115 of the Civil Procedure Code, to set aside the order dated 03.01.2018 passed by the District Munsif, Palani in E.P.No.68 of 2016 in O.S.No.692 of 1997.

For Petitioners : Mr.T.Lenin Kumar

For Respondents : Mr.D.Venkatesh (for cavetor/R1)

ORDER

This Civil Revision Petition has been filed to set aside the order passed in E.P.No.68 of 2016 in O.S.No.692 of 1997 dated 03.01.2018 on the file of the learned District Munsif, Palani.

2. The facts of the case are that the respondents herein/plaintiffs have instituted a suit in O.S.No.692 of 1997, seeking the relief of declaration and recovery of possession against one Gandhiri. The said suit was decreed, as prayed for, on 01.11.2004, followed by which, an execution petition in E.P.No.68 of 2016 came to be filed. The execution petition was contested by the legal heirs of the deceased Gandhiri and the said E.P., was allowed by the Executing Court. Aggrieved thereby, the present Civil Revision Petition came to be filed.

3. The learned Counsel for the petitioners would submit that the respondents herein did not implead all the legal heirs of the said Gandhiri. Moreover, all the legal heirs of Thirumalaiammal, one



of the plaintiffs, are also not impleaded by the respondents/plaintiffs. Despite the same was pleaded before the Executing Court, the Court below has erred in allowing the execution petition. Therefore, he prays for allowing the civil revision petition, on the ground of Non-joinder of necessary parties.

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4. Heard the learned Counsel appearing on both sides and perused the documents placed on record.

5. It is seen from the records that the suit was decreed on 01.11.2004, challenging which, an appeal in A.S.No.50 of 2010 was filed before the Sub Court, Dindigul. The said A.S.No.50 of 2010 was dismissed as abated on 28.03.2014, since, during the pendency of the appeal suit, the said Gandhiri died. It is stated by the petitioners that they are taking steps to restore the appeal suit back on file.

6. Perusal of records would show that the petitioners herein failed to produce evidences, viz., legal heir certificate, to show that the legal heirs of Gandhiri and Thirumalaiammal were not impleaded as parties. It is also seen that the plaintiffs have filed execution application in E.A.No.62 of 2016 to implead necessary legal heirs, wherein, the petitioners herein are also parties. But, they neither appeared before the Executing Court nor filed their counter and allowed the execution petition to set *ex-parte*.

7. Considering the material facts and the circumstances of the present case on hand, in my considered opinion, there is no infirmity in the order passed by the Executing Court in E.P.No.68 of 2016 in O.S.No.692 of 1997, which does not warrant interference and the civil revision petition is liable to be dismissed.

8. Accordingly, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

The District Munsif, Palani.

+One cc to Mr.T.Lenin Kumar, Advocate, SR.No.43013

gk

RL/3C/2P/KK/SAR1/16/2/2018

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