



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED: 04.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN  
C.R.P.(PD)(MD).No.534 of 2017

WEB COPY

1.R.Alagukumar  
2.S.R.Subbiah

... Petitioners/Petitioners/Plaintiffs

Vs.

Geetha Anand

... Respondent/Respondent/Defendant

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 20.10.2014 made in I.A.No.199 of 2014 in O.S.No.47 of 2012 on the file of Distict Munsif Cum Judicial Magistrate Court, Bodinayakkanur and allow this revision.

For petitioner : Mr.H.Thayumanaswamy

For Respondent : Mr.R.Suriyanarayanan

ORDER

\*\*\*\*\*

O.S.No.108 of 1998 on the file of the Sub Court Periyakulam was filed by Smt.Mariammal through her Power of Attorneys R.Alagukumar and S.R.Subbiah. It is a suit for redemption of mortgage. The suit was decreed ex parte in the year 2002. To set aside the same, the defendant Geetha Anand filed an application under Order 9 Rule 13 of CPC. But that was in the year 2011. The set aside application was allowed. Now the suit is being contested on merits and renumbered as O.S.No.47 of 2012 on the file of the District Munsif Cum Judicial Magistrate Court, Bodinayakanur. Now at this stage, I.A.No.199 of 2014 was filed by the revision petitioners herein for amending the cause title. The Court below by order dated 20.10.2014 dismissed the said I.A. Questioning the same, this Civil Revision Petition has been filed.

2.As rightly contended by the learned counsel for the respondent, the suit was instituted by Mariammal. The revision petitioners herein had only represented her as Power of Attorneys. Since the said Mariammal is no more, the Power of Attorney issued by her would also lapse automatically, unless it was coupled with interest. But that is not the case here.

3.The revision petitioners herein are seeking to come on record as settlees by virtue of the settlement deed executed by the said Mariammal. The proper course open to the revision petitioners herein would be to file an I.A., for getting themselves impleaded under Order 10 of CPC. The petitioners herein cannot short circuit the procedure by seeking to amend the cause title. Therefore, the order passed by the Court below is definitely



sustainable. It does not call for any interference.

4. But the matter again rest there. This is because the respondent herein had got the ex parte decree against only a dead person. Any order against dead person would be a nullity. However, this Court does not propose to reopen this issue. The order setting aside the ex parte decree will hold good. But then, the revision petitioners are given time to file an application for getting themselves impleaded as plaintiffs in O.S.No.47 of 2012 in the place of the deceased plaintiff. On such an application being filed, the Court below shall allow the same.

5. With this direction, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-  
Assistant Registrar

/True Copy/

Sub Assistant Registrar (CS-IV)

To:

The District Munsif Cum Judicial Magistrate,  
Bodinayakanur.

+1CC TO MR.H.THAYUMANASWAMY ADVOCATE IN S.R.NO.88601.  
+2CCs TO MR.R.SURIYANARAYANAN ADVCOATE IN SR.No.88608.

PNN  
DS SKN SAR-4 09.10.2018 2P/5C

ORDER MADE IN  
C.R.P. (PD) (MD) .No.534 of 2017

04.10.2018