



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (PD) (MD)Nos.1805 to 1807 of 2016

1.N.Thangammal

2.T.Jeya Nagammal

... Petitioners in all cases

Vs.

N.Prem Kumar

N.K.Ramaswamy (died)

... Respondent in all cases

Prayer in CRP(MD)No.1805 of 2016 : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 29.04.2016 passed in I.A No.419 of 2012 in O.S No.39 of 2009 on the file of the District Court Kanyakumari Division at Nagarcoil.

Prayer in CRP(MD)No.1806 of 2016 : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 23.04.2016 passed in I.A No.422 of 2013 in O.S No.39 of 2009 on the file of the District Court Kanyakumari Division at Nagarcoil.

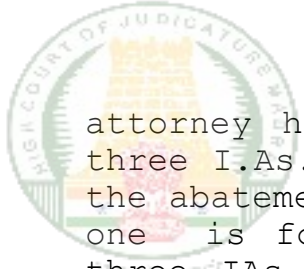
Prayer in CRP(MD)No.1807 of 2016 : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 29.04.2016 passed in I.A No.423 of 2013 in O.S No.39 of 2009 on the file of the District Court Kanyakumari Division at Nagarcoil.

For Petitioners
in all cases : Mr.D.Nallathambi

For Respondent
in all cases : Mr.G.Newton Raj

COMMON ORDER

The respondent herein filed O.S No.39 of 2009 on the file of the District Judge, Kanniyakumari Division at Nagercoil seeking the relief of specific performance. The plaint averments proceeded on the premise that the defendant in his capacity as power of attorney and his wife Thangammal entered into a sale agreement with the plaintiff on 13.10.2006. The plaintiff for reasons best known did not chose to implead the principal. On the other hand, he chose to proceed against the power of attorney alone. The said power of



attorney has since passed away. Thereafter, the plaintiff filed three I.As. First one is for condoning the delay in setting aside the abatement. Second one is to set aside the abatement. The third one is for impleading the LRs of the sole defendant. All the three IAs were allowed by the orders impugned in these civil revision petitions. Questioning the same, the persons who have not been brought on record as Lrs of the sole defendant, have filed these Civil Revision Petitions.

2.Heard the learned counsel on either side.

3.The revision petitioners are admittedly the wife and daughter of the deceased sole defendant. But then, the plaintiff would be entitled to bring them on record only if it can be shown that the right to sue the defendant would survive in his favour. In this case, the defendant was sued not in his personal capacity but as the power of attorney of his principal. Of course, in this case, the principal happens to be the wife of the defendant. For reasons best known, the first petitioner herein was not impleaded in the first instance. The suit was instituted only against the power agent alone. When the power agent passes away, the right to sue him cannot survive. His LRs cannot be brought on record.

4.In the present case, the revision petitioners have been brought on record only in the capacity of legal representatives. Since this Court holds that the right to sue does not survive, the orders impugned in these civil revision petitions are set aside and these three civil revision petitions are allowed. No costs.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The District Court Kanyakumari Division at Nagarcoil.

- 1 CC TO Mr.D.Nallathambi , ADVOCATE IN SR No.87070.
- + 1 CC TO Mr.G.Newton Raj , ADVOCATE IN SR No.86987.
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- Skm
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