

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 22.01.2018

Delivered on : 20.03.2018

CORAM :

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM**CRP(PD)(MD).No.2004 of 2011****and****MP(MD)No.1 of 2011**

- 1.Kanagam
- 2.Muthirsha
- 3.Vijipriya
- 4.Sujipriya
- 5.Vijisha
- 6.Sujith Singsha

...Revision Petitioners/Proposed
Respondents 10 to 15

vs.

- 1.Samuel Nadar (Died)
- 2.Gnanamma (Died)
- 3.Johnson
- 4.Gnanabai
- 5.Lilly Bai
- 6.Elsi Bai
- 7.Baby
- 8.Suseelai
- 9.Ramani Bai
- 10.Christopher
- 11.Titus
- 12.Dias
- 13.Austin Daniel
- 14.Justin Daniel
- 15.Kesari Daniel
- 16.Florence Darli
- 17.Azari Daniel
- 18.Babu Daniel
- 19.Raj Daniel
- 20.David Daniel
- 21.Muthammal

...Respondents/Petitioners/Plaintiffs

...Respondents 13 to 21/Respondents 1 to 9 /
Defendants 1 to 9

PRAYER : Petition filed under Article 227 of the Constitution of India, to set aside the order and Decreetal order of the I Additional District Munsif Court, Kuzhithurai, dated 15.07.2011 in I.A.No.309 of 2009 in O.S.No.655 of 1987.

For Petitioners

: Mr.V.M.Balamohan Thambi

For Respondents

: Mr.B.Christopher

R3, R4, R6, R7 & R9

For Respondents

: No Appearance (Given up)

R5, R8, R10, R11 & R12

**ORDER**

This Civil Revision Petition has been preferred by the petitioners against the fair and decretal order passed in I.A.No.309 of 2009 in O.S.No.655 of 1987 on the file of I Additional District Munsif, Kuzhithurai.

2.The brief case is that the plaintiffs had filed the suit for preliminary decree for redemption and the preliminary Decree was passed on 21.03.2003 and the final decree application was filed on 30.01.2006. Pending final decree proceedings, the plaintiffs have filed I.A.No.309/2006 to implead the legal heirs of the deceased 2nd defendant.

3.The respondents 10 to 15 stated that the 2nd respondent died before the final decree proceedings. Hence, the proposed parties should have been added as parties before filing of the final decree application.

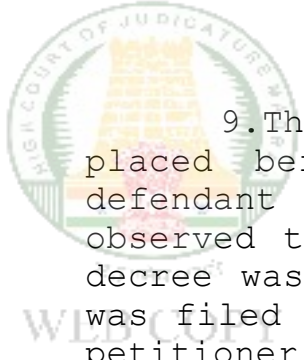
4.After hearing both sides, the trial Court has allowed the application in I.A.No.309/2006, aggrieved which, the present Civil Revision Petition has been filed by the proposed respondents 10 to 15.

5.Heard the learned Counsel on either side and perused the materials available on record.

6.The learned counsel for the revision petitioners attacked the order passed by the lower court on the ground that since the 2nd respondent died before the final decree proceedings, the petition is barred by limitation.

7.I.A.No.309 of 2009 was filed by the petitioner who is the 10th plaintiff in the suit and he states that the Second respondent Justin Daniel died after filing the final decree application leaving behind his wife and children. In the nature and circumstances of the final decree application, the Legal heirs of the deceased 2nd respondent have to be impleaded.

8.In the counter statement filed by Kanagam who is the wife of Justin Daniel it is stated that impleading the defendants 10 to 15 as the legal heirs of the deceased 2nd defendant is not maintainable. The 2nd defendant died on 24.03.2004 which is long before the filing of the final decree application. The preliminary decree was dated 21.03.2003. Since the plaintiffs are the close relatives of the 2nd defendant who are aware of the date of preliminary decree, 2nd defendant ought to have filed the impleading application along with final decree application and hence it is barred as against the 2nd defendant.



9.The trial Court after perusing the pleadings and the facts placed before it, has impleaded the legal heirs of the 2nd defendant as additional respondents. The trial Court has also observed that the suit is one for redemption and the preliminary decree was passed on 21.03.2003 and the final decree application was filed on 30.01.2006 and on receipt of the notice sent by the petitioner in the final decree petition immediately steps were taken by this petitioner to implead the legal heirs of the 2nd respondent. There is no bar in impleading the petitioners after the passing of the preliminary decree and since abatement is not applicable to the final decree proceedings, the said petition was allowed. The trial Court by relying on the decision arrived in 2017 (3) MWN (Civil) 663 in the case of Pankajbhai Rameshbhai Zalavadia Vs. Jethabhai Kalabhai Zalavadiya (deceased) through L.Rs. and others observed that there cannot be any dispute that the party impleaded have a direct interest in the subject matter of litigation.

10.The legal representatives of the 2nd respondent are necessary parties and hence, such application have to be allowed to meet the ends of justice. The 2nd respondent was alive at the time of passing of the preliminary decree before the Appellate Court. Hence the order of the trial Court does not warrant any interference.

11.In the result, this Civil Revision Petition is dismissed. No costs. Conseauntly, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The I Additional District Munsif Court,
Kuzhithurai.

+1cc to Mr.B.Christopher ,Advocate Sr.No.56728

TM/CM

VB/JC/SAR1/03.04.2018/3P/3C

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