



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.06.2018

WEB COPY

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP(MD) (PD) Nos.2100, 2397 and 2398 of 2013
and
MP(MD) Nos.1, 1 and 1 of 2013

Vasumathi ... Petitioner in all CRPs.,/Plaintiff

vs.

1.Bhuvaneswari

Raj @ Rajarajan (died) ... 1st Respondent/1st Defendant
in all CRPs.,

2.State of Tamil Nadu represented by
District Collector,
Karur.

3.The Tahsildar,
Office of the Taluk Office,
Karur. ... Respondents 2 & 3/Defendants 3 & 4 in all CRPs.,

4.Radhika

5.Srudika ... Respondents 4 & 5/Proposed Respondents
in all CRPs.,

Common Prayer:- Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.Nos.518, 519 and 520 of 2013 in O.S.No.456 of 2012, on the file of the learned Additional District Munsif Court, Karur, dated 09.10.2013.

For Petitioner
in all CRPs.,

: Mr.M.Bindran

For R1
in all CRPs.,

: Mr.M.P.Senthil

For R2 & R3
in all CRPs.,

: Mr.Aaiyram Selvakumar
Additional Government Pleader

For R4 & R5
in all CRPs.,

: No appearance

COMMON ORDER

These Civil Revision Petitions have been filed by the plaintiff in the suit in O.S.No.456 of 2012 on the file of the Additional District Munsif Court, Karur.

2.The brief facts that are necessary for disposal of all the Civil Revision Petitions are as follows:

2.1.The revision petitioner has filed the suit in O.S.No.456 of 2012 on 31.07.2012, before the Additional District Munsif Court, Karur, for restraining the defendants 1 and 2, their men and family members from interfering with the plaintiff's peaceful possession and enjoyment of the suit property and for a consequential relief of injunction restraining the revenue officials, who are impleaded as defendants 3 and 4, from making any alteration in the revenue records in respect of the suit properties on the basis of an illegal cancellation of Patta pass book.

2.2.It is admitted that the second defendant in the suit in O.S.No.456 of 2012 died on 05.03.2011, even prior to the filing of the suit. However, the plaintiff filed a petition in I.A.No.518 of 2013, to condone the delay of 629 days in filing a petition to set aside the abatement caused by the death of the second defendant. The plaintiff also filed I.A.Nos.519 and 520 of 2013 to set aside the abatement caused due to the death of the second defendant and to bring on record the respondents 4 and 5 in the Civil Revision Petitions as the legal representatives of the deceased second defendant. All the interlocutory applications were dismissed by the learned Additional District Munsif, Karur and aggrieved by the same, the plaintiff has preferred the above Civil Revision Petitions.

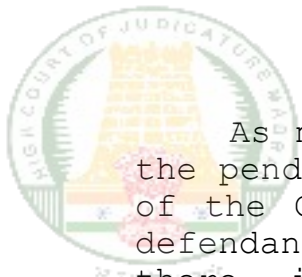
3.Sum and substance, the learned counsel appearing for the revision petitioner states that the delay has been properly explained and that the plaintiff should be given an opportunity to prosecute the suit after impleading the legal representatives of the deceased second defendant. It is further stated that serious prejudice will be caused to the plaintiff, in case the revision petitions are dismissed.

4.The learned counsel appearing for the first respondent, however, states that the petitions filed by the revision petitioner by invoking Order XXII Rule 4 CPC are not maintainable, as the second defendant died long prior to the filing of the suit. It is further stated by the learned counsel for the respondent that a petition ought to have been filed by the revision petitioner under Order I Rule 10 of CPC, instead of Order XXII Rule 4 of CPC.

5.As a matter of fact, the learned counsel appearing for the respondent fairly conceded the position ruled by the Hon'ble Supreme Court in the case of Pankajbhai Rameshbhai Zalavadia Vs. Jethabhai Kalabhai Zalavadiya (deceased) through LRs., and others reported in 2017 (6) CTC 54, wherein, the Hon'ble Supreme Court has held as follows:



14. In the matter on hand, though the trial court had rightly dismissed the application under Order 22 Rule 4 of the Code as not maintainable at an earlier point of time, in our considered opinion, it needs to be mentioned that the trial Court at that point of time itself could have treated the said application filed under Order 22 Rule 4 of the Code as one filed under Order 1 Rule 10 of the CPC, in order to do justice between the parties. Merely because of the non-mentioning of the correct provision as Order 1 Rule 10 of the Code at the initial stage by the advocate for the plaintiff, the parties should not be made to suffer. It is by now well settled that a mere wrong mention of the provision in the application would not prohibit a party to the litigation from getting justice. Ultimately, the Courts are meant to do justice and not to decide the applications based on technicalities. The provision under Order 1 Rule 10 CPC speaks about judicial discretion of the Court to strike out or add parties at any stage of the suit. It can strike out any party who is improperly joined, it can add any one as a plaintiff or defendant if it finds that such person is a necessary or proper party. The Court under Order 1 Rule 10(2) of the Code will of course act according to reason and fair play and not according to whims and caprice. The expression "to settle all questions involved" used in Order 1 Rule 10 (2) of the Code is susceptible to a liberal and wide interpretation, so as to adjudicate all the questions pertaining to the subject matter thereof. The Parliament in its wisdom while framing this rule must be held to have thought that all material questions common to the parties to the suit and to the third parties should be tried once for all. The Court is clothed with the power to secure the aforesaid result with judicious discretion to add parties, including third parties. There cannot be any dispute that the party impleaded must have a direct interest in the subject matter of litigation. In a suit seeking cancellation of sale deed, as mentioned supra, a person who has purchased the property and whose rights are likely to be affected pursuant to the judgment in the suit is a necessary party, and he has to be added. If such purchaser has expired, his legal representatives are necessary parties. In the matter on hand, since the purchaser of the suit property, i.e., defendant no.7 has expired prior to the filing of the suit, his legal representatives ought to have been arrayed as parties in the suit while presenting the plaint. As such impleadment was not made at the time of filing of the plaint in view of the fact that the plaintiff did not know about the death of the purchaser, he cannot be non-suited merely because of his ignorance of the said fact. To do justice between the parties and as the legal representatives of the purchaser of the suit property are necessary parties, they have to be impleaded under Order 1 Rule 10 of the Code, inasmuch as the application under Order 22 Rule 4 of the Code was not maintainable.

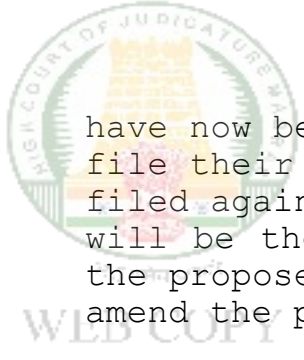


As mentioned supra, it is only if a defendant dies during the pendency of the suit that the provisions of Order 22 Rule 4 of the Code can be invoked. Since one of the defendants i.e. defendant No.7 has expired prior to the filing of the suit, there is no legal impediment in impleading the legal representatives of the deceased defendant No.7 under Order 1 Rule 10 of the Code, for the simple reason that the plaintiff in any case could have instituted a fresh suit against these legal representatives on the date he moved an application for making them parties, subject of course to the law of limitation. Normally, if the plaintiff had known about the death of one of the defendants at the time of institution of the suit, he would have filed a suit in the first instance against his heirs or legal representatives. The difficulty that the High Court experienced in granting the application filed by the plaintiff under Order 1 Rule 10 of the Code discloses, with great respect, a hyper-technical approach which may result in the miscarriage of justice. As the heirs of the deceased defendant no.7 were the persons with vital interest in the outcome of the suit, such applications have to be approached keeping in mind that the Courts are meant to do substantial justice between the parties and that technical rules or procedures should not be given precedence over doing substantial justice. Undoubtedly, justice according to the law does not merely mean technical justice but means that law is to be administered to advance justice.

6.The Hon'ble Supreme Court though held that the provision under Order I Rule 10 of CPC., alone is applicable when the suit is filed against the dead person, to implead his legal heirs on record and that the provision, namely, Order XXII Rule 4 of CPC., can be invoked only if the defendant died during the pendency of the suit, observed further that the Court can very well treat the applications filed under Order XXII Rule 4 CPC as the one filed under Order I Rule 10 CPC., in order to render justice to the parties.

7.In that view of the matter, the Civil Revision Petition in C.R.P.(PD)(MD)No.2398 of 2013 is allowed and the order made in I.A.No.520 of 2013 in O.S.No.456 of 2012, dated 09.10.2013 by the learned Additional District Munsif, Karur is set aside and the petition to bring on record the respondents 4 and 5 herein as legal representatives of the deceased second defendant on record in I.A.No.520 of 2013 is allowed. The application in I.A.No.520 of 2013 is treated as an application filed under Order I Rule 10 of CPC and the learned Additional District Munsif, Karur is directed to implead the respondents 4 and 5 herein as defendants 5 and 6 in the suit in O.S.No.456 of 2012.

8.Since the applications in I.A.Nos.518 and 519 of 2013 are unnecessary, they are closed. Accordingly, the Civil Revision Petitions in C.R.P.(PD)(MD)Nos.2100 and 2397 of 2013 are disposed of. Since the respondents 4 and 5 in the Civil Revision Petitions



have now been impleaded as defendants 5 and 6, they are permitted to file their written statement and the suit will be treated as the one filed against them and the date of application in I.A.No.520 of 2013 will be the relevant date for the plaintiff to seek relief against the proposed defendants in the suit. The petitioner is permitted to amend the plaint, if required.

9.Since the suit was filed in the year 2012, the learned Additional District Munsif, Karur, is directed to dispose of the suit as expeditiously as possible, preferably within a period of 6 months from the date of receipt of a copy of this order. No costs. consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

The Additional District Munsif,
Eraniel.

COPY TO:

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.M.P.Senthil, Advocate SR.No. 68163

CRP(MD) (PD) Nos.2100, 2397 and 2398 of 2013
13.06.2018

mm

JM/SV MMS/SAR 1/28.06.2018/5P/5C