



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:25.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD) No.957 of 2013 (PD)

WEB COPY

Muthu

... Petitioner

Vs.

1.G.Soundararajan

2.Andi

... Respondents

PRAYER : Petition filed under Section 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.765 of 2007 in O.S.No.147 of 2003 on the file of the District Munsif, Kuzhithalai, Karur District dated 09.03.2011 and allow the Civil Revision Petition.

For Petitioner	: Mr.M.Ajmalkhan
For R1	: Mr.G.Sridharan
For R2	: no appearance

ORDER

This Civil Revision Petition has been filed against the order passed in I.A.No.765 of 2007 in O.S.No.147 of 2003 on the file of the District Munsif, Kuzhithalai, Karur District dated 09.03.2011.

2.Brief facts that are necessary for the purpose of disposing of the Civil Petition are as follows:

1.The plaintiff/revision petitioner has filed a suit for declaration that the sale deed executed in respect of the suit property by the defendants on 01.07.2002 is null and void and for permanent injunction, restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

2.It is stated that during the pendency of the suit, the fourth defendant died. The revision petitioner filed an application to implead the legal heirs of the deceased/fourth defendant in the suit. The revision petitioner has filed an application to implead the wife and two sons of the deceased/fourth defendant. However, one of the daughter of the deceased/fourth defendant was not shown as a party in the petition filed by the plaintiff/revision petitioner and on that ground that the petition filed by the plaintiff in I.A.No.765 of 2007 was dismissed.

<https://hcservices.ecourts.gov.in/hcservices/>

3.It is not in dispute that the fourth defendant died and



steps have been taken by the revision petitioner to implead the legal heirs of the fourth defendant. Merely, one of the legal heirs of deceased/fourth defendant namely, his daughter was not impleaded, the petition cannot be dismissed on that ground. The revision petitioner/plaintiff ought to have been given liberty to file an application to include the other legal heirs also.

4. In that view of the matter, the civil revision petition is liable to be allowed and the order of the Lower Court is liable to be set aside. However, it is brought to the notice of this Court that the suit filed by the plaintiff / revision petitioner was dismissed for default and an application to condone the delay in filing the petition to restore the suit is filed and the same is pending.

5. In view of this, the Civil Revision Petition is allowed and the petition in I.A.No. 765 of 2007 in O.S.No.147 of 2003 stands allowed. In case, the suit in O.S.No.147 of 2003 is not restored, the application in I.A.No.765 of 2007 stands dismissed and this order will not give fresh life to the suit. In case, the suit is restored I.A.No.765 of 2007 stands allowed as per the order of this Court.

6. The revision petitioner is also directed to implead the daughter of the deceased/fourth defendant who was not shown as a party to the suit. If the revision petitioner do not take any steps to implead the daughter of the deceased/fourth defendant, the suit may also be defended on the ground of non joinder of necessary parties.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif,
Kuzhithalai, Karur District,
2. The Record Keeper,
V.R.Section, (2 Copies),
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.C.Vakeeswaran, Advocate in SR.No.63466,

RMI

DS/RSK-SKN/SAR-4 :22.05.2018: 2P/5C