

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.29 of 2013 and
M.P.No.1 of 2013

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- 1.A/M. Arunachalaeswarar Devasthanam,
Tiruvannamalai,
Rep. By its Executive Officer/Joint Commissioner,
2. Ramachandra Upathiyaya
3. Muthukrishnan ... Petitioners

v.

1. Muthuraman Chettiar,
2. The District Collector,
Tiruvannamalai District,
Tiruvannamalai ... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decretal order dated 15.11.2012 passed in I.A.No.100 of 2012 in A.S.No.62 of 2008 on the file of the Additional Subordinate Judge, Tiruvannamalai.

For Petitioner : Mr. P. Denesh Kumar

For Respondents : Mr.R.Rajarajan – for R1

No Appearance – for R2

ORDER

Challenging the fair and final order passed in I.A.No.100 of 2012 in A.S.No.62 of 2008 on the file of the Additional Subordinate Court, Tiruvannamalai, the defendants 2, 4 and 6 in O.S. No.133 of 1996 on the file of the Additional District Musnif Court, Tiruvannamalai, have filed the above Civil Revision Petition.

2.1 The plaintiffs filed the suit in O.S. No.133 of 1996 for declaration and permanent injunction. The suit was originally filed by the 1st plaintiff, viz., one Panduranga Chettiar, representing Ulagamapuram Vellalan Chetti Community People and during the pendency of the suit, the 1st plaintiff had died and the plaintiffs 2 to 4 were impleaded in the place of 1st plaintiff representing Ulagamapuram Vellalan Chetti Community People in the suit. After contest, the Trial Court, decreed the suit.

2.2 Aggrieved over the same, the defendants 2, 4 and 6 have filed the appeal in A.S.No.62 of 2008 on the file of the Additional Subordinate Judge, Tiruvannamalai.

2.3 In the grounds of appeal, the appellants, inadvertently mentioned the 4th plaintiff's name alone instead of mentioning that he was representing the Ulagamapuram Vellalan Chetti Community People. In the plaint cause title, 4th plaintiff name has been mentioned as Muthuraman Chettiar, representing the Ulagamapuram Vellalan Chetti Community People. Whereas, in the grounds of appeal in A.S.No.62 of 2008, the appellants have mentioned only the name of the 4th plaintiff, viz., Muthuraman Chettiar. Subsequently, when the appeal was taken up for hearing, the appellants took out an application in I.A.No100 of 2012 under Order VI Rule 17 of CPC to amend the cause title.

3. On a perusal of the proposed amendment, it could be seen that the petitioners-appellants sought to include that the 4th plaintiff was representing the Community People as found in the plaint.

4. On a perusal of the cause title found in the plaint and in the grounds of appeal, it is clear that the appellants have committed a *bona fide* mistake in not including the words representing "Ulagamapuram Vellalan Chetti Community People".

5. The Lower Appellate Court, erroneously dismissed the application. The reasoning given by the Lower Appellate Court cannot be accepted for the reason that the cause title in the memorandum of appeal in A.S.No.62 of 2008 should contain the cause title as found in the plaint. When there is a *bona fide* mistake, the Lower Appellate Court, should not have dismissed the application.

6. The learned counsel appearing for the respondents submitted that since the suit has been filed on representative capacity, a new party cannot be impleaded under Order I, Rule 8 CPC and that the appellants can only file an application under Order I Rule 10 of CPC to implead the 4th plaintiff as respondent in the appeal.

7. However, this contention cannot be accepted for the reason that even in the cause title in the plaint, the 4th plaintiff was representing Ulagamapuram Vellalan Chetti Community People and therefore, there is no necessity for filing an application under Order I Rule 10 of CPC. Only if a new party is to be added in the suit or in the appeal, then the provisions of Order I Rule 10 of CPC shall apply. Since the 4th plaintiff is already a party representing Community People in the suit, the filing of application under Order I Rule 10 of CPC shall not arise.

8. In such view of the matter, the order passed by the Lower Appellate Court in I.A.No100 of 2012 is liable to be set aside. Accordingly, the same is set aside. The application in I.A.No.100 of 2012 stands allowed.

9. It is brought to the notice of this Court that the petitioners-appellants in A.S.No.62 of 2008 omitted to mention the 3rd plaintiff's name in the memorandum of appeal. The learned counsel appearing for the petitioners submitted that since the name of the 3rd plaintiff has been shown as deceased in the decree passed in O.S. No.133

of 199, the 3rd plaintiff's name was not mentioned in the grounds of appeal. The learned counsel appearing for the respondents submitted that the 3rd plaintiff is very much alive and therefore, he should have been made as a respondent in the appeal.

10 . This also appears to be a *bona fide* mistake committed by the appellants for the reason that the name of the 3rd plaintiff has been shown as deceased person in the decree. Therefore, they did not array the 3rd plaintiff as a respondent in the appeal in A.S.No.62 of 2008.

11. In these circumstances, liberty is given to the appellants to file appropriate application to implead the 3rd plaintiff, viz., Thirukachi Nambi Chettiar representing Ulagamapuram Vellalan Chetti Community People as respondent in the appeal in A.S.No.62 of 2008.

With these observations, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

04.11.2019

Index : Yes / No

Speaking order / Non Speaking Order

Rj

To

1. The Additional Subordinate Judge,
Tiruvannamalai.
2. The District Collector,
Tiruvannamalai District, Tiruvannamalai



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