

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

**C.R.P.NPD.No.1274 of 2016 &
C.M.P.No.7081 of 2016**

1. R. Muthulakshmi
2. N. Manimozhi
3. J. Porchelvi Petitioners

-VS-

1. Ponnammal
2. Rukumani
3. Banumathi
4. Pappy @ Manonmani
5. Muthusamy
6. Magudeswaran
7. Pushpa
8. Pappy @ Angulakshmi
9. Rajmohan
10. Jayalakshmi
11. Kamalam
12. Saraswathy
13. Lakshmi
14. Appavu
15. Subramani
16. Komali Nadar @ Palanisamy Nadar
(R15 and 16 given up)
17. Kannammal
18. Shanthamani
19. M. Karthikeyan
20. Maheswari
21. Anitha
22. Revathi (Minor)
represented by her guardian
Maheswari
(the respondents 21 to 23 are
impleaded as L.Rs of deceased
made in I.A.No.248 of 2011)

23.Geethalakshmi

24.Nandhini Priya

25.Vinodhini

Minor represented by next
friend and mother Geethalakshmi

26.D.Subbaiah

27.S.Ezhil @ Elango

28.Elavanil @ Mani

29.Thenmozhi

30.G. Poongkuzhali

(Respondents 2,3,4,5,6,7,8,9,
10 to 14, 17 to 19, 20 to 23 have
remained exparte . Hence they are
given up.)

.. Respondents

Prayer : Civil Revision Petition filed under Article 115 of CPC against the fair and decretal order made in I.A.No.1076 of 2012 in I.A.No.657 of 2006 in O.S.No.111 of 2005 dated 23.3.2015 on the file of Sub Court, Dharapuram, Tiruppur to set aside the same.

For Petitioners : Mr. M. Kalyanasundaram

For Respondents : Mr. S. Saravanan for R1

ORDER

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The petitioner is the first defendant in the suit O.S. No.111 of 2005 on the file of Sub Court, Dharapuram.

2. The 1st respondent filed the suit for partition, in which, preliminary decree came to be passed on 17.4.2007. Thereafter, he filed a petition in I.A.No.657 of 2007 for passing final decree.

3. At that juncture, it was informed that the third defendant in the suit died. Therefore, a petition was filed to condone the delay in filing the petition in I.A.No.1076 of 2012 to set aside the abatement and to bring the legal representatives on record.

4. The trial Court condoned the delay in filing the petition to set aside the abatement on payment of cost of Rs.1,500/- to be paid to each of the defendants 1, 15 and 16.

5. Aggrieved over the same, the 1st defendant/1st respondent has preferred the above Civil Revision Petition.

6. Learned Senior counsel appearing for the petitioner would vehemently contend that under Order 22, Rule 4(4) CPC, it is categorically held that, when a party remains absent at the time of hearing or failed to file written statement, or failed to appear thereafter also, his appearance can be dispensed with.

' Order XXII, Rule 4(4) CPC read as follows;

'Order XXII

*4. Procedure in case of death of one of several
defendants or of sole defendant. - (1).....*

(2).....

(3)

*(4) The Court whenever it thinks fit, may exempt the
plaintiff from the necessity of substituting the legal
representatives of any such defendant who has failed to file a
written statement or who, having filed it, has failed to appear
and contest the suit at the hearing; and judgment may, in such
case, be pronounced against the said defendant
notwithstanding the death of such defendant and shall have the
same force and effect as if it has been pronounced before
death took place.'*

7. Therefore, when a preliminary decree has already been passed. The legal representatives of the 3rd defendant need not be brought on record and without their presence, the final proceedings can be continued. Therefore, bringing the legal heirs on record will further protract the proceedings and hence the order should be set aside.

8. Learned counsel appearing for the respondent would contend that the circumstances specified under Order XXII, Rule 4(4) CPC, will come into play only when there is no application filed for bringing the legal representatives on record. But in this case, the petition is filed and the delay has been condoned, consequently, abatement was set aside and the legal heirs were brought on record and the final decree proceedings are going on.

9. Heard the submissions.

10. It is true to state that as per Or.XXII R.4(4) CPC when the defendant who has failed to file a written statement or who, having filed it, has failed to appear before the Court and contest the case, the Court can proceed with the case and pronounce the judgment as if the party has not died. There is no necessity for bringing the legal representative of such defendant who failed to file written statement or to appear and contest the case. The present case on hand stands on a different footing. In this case, the preliminary decree has already been passed. An application is filed for final decree proceedings in which an application to condone the delay in filing the petition to set aside abatement and to bring legal representatives on record has been filed. In fact, as rightly contended by the learned counsel for respondent the delay in filing was condoned and consequently the abatement was also set aside on payment of costs. Once the abatement is set aside, it is automatic that the legal representatives of that deceased person shall also be brought on record. It is not the case of the petitioner that the deceased person failed to file written statement or failed to appear and contest the case. Therefore, after travelling thus far, the petitioner shall not shy away from paying costs to the contesting respondent.

11. It is also pertinent to note that in the preliminary decree proceedings the rights of the parties are confirmed. Smooth transition of allocating their respective shares is done by way of final decree proceedings. In that situation, presence of all the parties would facilitate smooth transition, hence petition to bring the legal representatives on record will not cause prejudice. On the other hand, while it facilitates a smooth process it will also avoid multiplicity of litigations between the parties.

12. Therefore, this Court is of the view that it will facilitate the process of smooth allotment if legal heirs are brought on record, that too, when an application is filed for the same. Considering the same in a right perspective, the trial Court has allowed the application. Hence, I do not find any merits in the Civil Revision Petition and accordingly, it is dismissed. No costs. Consequently, connected C.M.P.No.7081 of 2016 is closed.

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Index: yes/No
Internet: yes/No

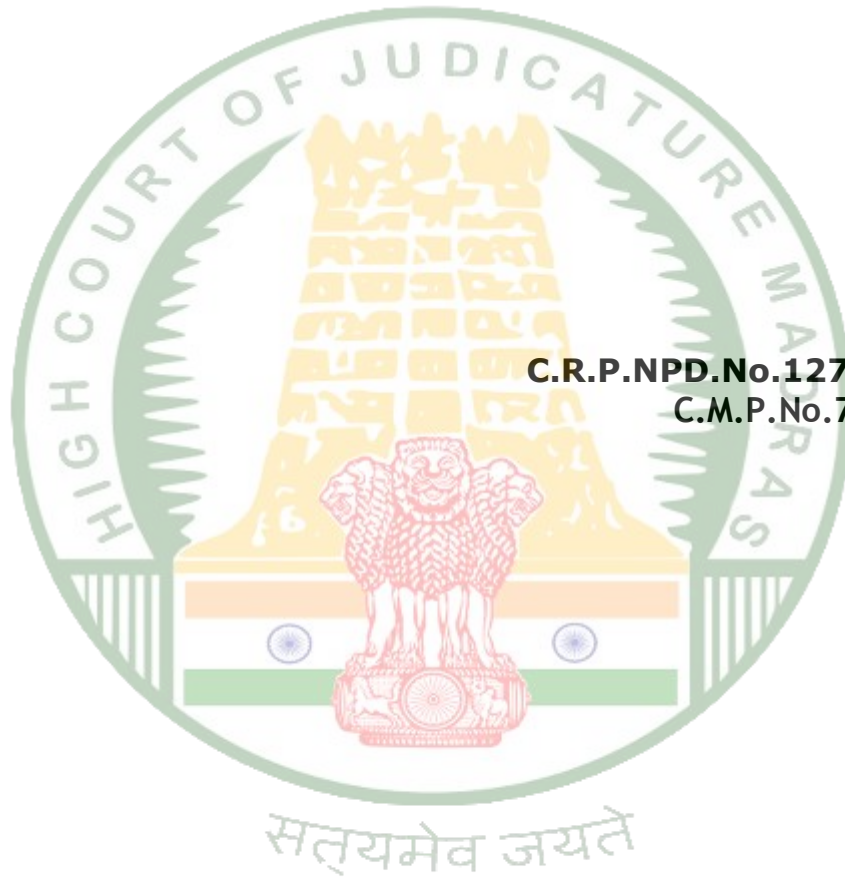
To

The Sub Court, Dharapuram, Tiruppur

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M.GOVINDARAJ, J.

msr/kpr



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