



IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Civil Appellate Jurisdiction)

Tuesday, the Twenty Third day of April Two Thousand Nineteen

PRESENT

THE HON`BLE MR JUSTICE P. RAJAMANICKAM

CMP No.9034 of 2019

IN SA.NO.210 OF 2013

1 THANGAVEL (DIED) [PETITIONERS]
2 KANAKAMBARAM
3 THANIKACHALAM
4 KUMAR
5 SANKAR
6 PRABAKARAN

Vs

1 RANGANATHAN GOUNDER [RESPONDENTS]
2 BOOPATHI

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to transpose the petitioners herein as Appellants 2 to 6 from the status of Respondents 2 to 6 in SA.210/2013 IN CMP No.9034 of 2019

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.V.RAGHAVACHARI, Advocate for the petitioner and of M/S.R.MEENAL, ADVOCATE on behalf of the Respondents the court made the following order:-

This petition has been filed to transpose the respondents 2 to 6 as appellants 2 to 6.

2. The learned counsel for the petitioners has submitted that the first respondent herein had filed a suit in O.S.No.364 of 2005 on the file of the Principal District Munsif, Thirukoilur for permanent injunction and also for mandatory injunction against the District Collector, Villupuram and ten others. She further submitted that the said suit was decreed as prayed for, as against which, the fifth defendant alone had filed an appeal in A.S.No.2 of



2008 by showing his sons namely the petitioners 2 to 6 herein as the respondents 2 to 6 in the first appeal. She further submitted that the said appeal was dismissed confirming the judgment and decree passed by the Trial Court as against which, the fifth defendant had filed the present second appeal and in the present second appeal also, his sons have been shown as the respondents 2 to 6. She further submitted that during pendency of the second appeal, the appellant died and hence his sons namely the respondents 2 to 6 in the second appeal have to be transposed as appellants 2 to 6 and permit them to continue the second appeal.

3. Per Contra, the learned counsel for the first respondent/plaintiff has submitted that the appellant is having three daughters and hence they are also to be added as parties. She further submitted that unless the said daughters are also impleaded as parties, later on, they may file a separate suit and it would cause prejudice to the first respondent/plaintiff and therefore, she prayed to dismiss the petition.

4. At this juncture, it would be relevant to refer to the decision in **Vijay A. Mittal and others Vs. Kulwant Rai (Dead) through Legal Representatives and another (2019) 3 SCC 520** wherein the Hon'ble Supreme Court in paragraph No.24.4 has held as follows:-

"24.4. Fourth, it is a trite law that if out of all the legal representatives, majority of them are already on record and they contested the case on merits, it is not necessary to bring other legal representatives on record. The reason is that the estate and the interest of the deceased devolved on the legal representatives is sufficiently represented by those who are already on record."

5. In this case, the suit itself is only for permanent injunction and mandatory injunction and the said reliefs were asked against the defendants 5 to 11 and the suit was decreed. The present second appeal has been filed by the fifth defendant alone and during pendency of the second appeal, he died. It is not in dispute that the respondents 2 to 6 are the sons of the sole appellant and they are already on record and they can represent the estate of the deceased appellant. In view of the aforesaid decision of the Hon'ble Supreme Court, it is not necessary to implead all the legal heirs of the deceased party. Therefore, the present petition seeking to transpose the respondents 2 to 6 who are the legal representatives of the deceased sole appellant, as appellants 2 to 6 has to be allowed.



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6. In the result, this petition is allowed. No costs.

-sd/-
23/04/2019
/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE 2ND ADDITIONAL
SUBORDINATE JDUGE VILLUPURAM.

2 THE PRINCIPAL DISTRICT MUNSIF
TIRUKOILUR

3. THE DISTRICT COLLECTOR,
VILLUPURAM.

4 THE SECTION OFFICER,
VR SECTION, HIGH COURT,
CHENNAI.

C.C. to M/S.V.RAGHAVACHARI Advocate SR.NO.5740

Order

in
CMP No.9034 of 2019
IN SA.NO.210 OF 2013

Date :23/04/2019

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