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CRP PD(MD)No.948 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.09.2019**

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRP PD(MD)No.948 of 2012

and

M.P.(MD)No.1 of 2012

Ammalu Ammal

... Petitioner

Vs.

1.P.Sekar

Packirisami Vanathiraiyar (died)

Vairathammal (died)

V.M.T.Bharathi (died)

2.Vijayal

3.Sasikala

4.Thulasi

5.Mallika

6.Anbuselvan

7.Padmavathi

8.Kumar

9.Naveen

10.Kariya

... Respondents

PRAYER: This petition is filed under Article 227 of Civil Procedure Code, against the Fair and Decreetal order, dated 15.12.2011 by the learned District Munsif, Pattukkottai made in I.A.No.478 of 2011 in I.A.No.66 of 2011 in O.S.No.145 of 2001.

For Petitioner : Mr.S.Deenadhayalan

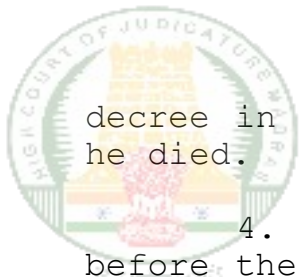
For Respondent-1 : Mr.D.R.Murugesan

O R D E R

This Civil Revision Petition has been filed challenging the fair and final order passed by the Court below, allowing an application filed by the respondents under Order 1, Rule 10 of CPC.

2. The petitioner is the plaintiff in the Suit filed in O.S.No.145 of 2001, seeking for the relief of recovery of possession and permanent injunction. In the said suit, the father of the respondents and also the respondents were shown as independent parties, apart from the other defendants. This suit came to be decreed *ex parte* by Judgment and Decree, dated 12.11.2010.

3. The father of the respondents namely, Packirisami Vanathiraiyar, filed an application to set aside the *ex parte*
<https://hcservices.ecourts.gov.in/hcservices/>



decree in I.A.No.66 of 2011. During the pendency of the petition, he died.

4. The 1st respondent thereafter filed I.A.No.478 of 2011, before the Court below under Order 1 Rule 10 of CPC., to transpose himself in the place of his father. The said application was allowed by the Court below and aggrieved by the same, the present petition has been filed before this Court.

5. The learned counsel for the petitioner submitted that the Court below ought not to have entertained the application, since the 1st respondent was shown as defendant in the suit and he has not taken any steps to set aside the *ex parte* decree. By filing the present application, under Order 1 Rule 10 CPC., the 1st respondent is trying to get over the *ex parte* decree by attempting to transpose himself in the place of his father. The learned counsel submitted that the Court below went wrong in allowing the application without considering this important issue.

6. Per contra, the learned counsel appearing for the 1st respondent submitted that a wrong provision has been quoted in the petition and the petition must be deemed to have been filed under Order 22 Rule 3 of CPC. The learned counsel submitted that such technical objections should not stand in the way of substantial justice. Therefore, the learned counsel submitted that no interference is required in the order passed by the Court below.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. The Court below failed to take note of the vital fact that the *ex parte* decree as against the 1st respondent remains unchallenged and the 1st respondent, by virtue of attempting to transpose himself in the place of his father in the set aside *ex parte* decree petition, is trying to get over the *ex parte* decree indirectly. This preliminary issue has not been considered by the Court below. Even assuming that the 1st respondent succeeds in the petition, the *ex parte* decree insofar as he is concerned will become final and therefore, no useful purpose will be served for the 1st respondent to get himself transposed in the place of his father.

9. In view of the above discussion, the fair and final order passed by the Court below in I.A.No.478 of 2011, dated 15.12.2011 is hereby set aside. The 1st respondent is given liberty to independently file a petition to set aside the *ex parte* decree and work out his remedy. As and when such a petition is filed, the Court below shall consider the same on its own merits and in accordance with law, after affording an opportunity to the petitioner.



10. In the result, the Civil Revision Petition is allowed.
No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar

Sub Assistant Registrar(CS)

MPK

To

The District Munsif,
Pattukkottai.

+1 CC to M/s.S.DEENADHAYALAN, Advocate SR-89931.
+1 CC to M/s.D.R.MURUGESAN, Advocate SR-90036.

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CS(18.10.2019) 3P 4C