



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.08.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) .No.473 of 2019

and

C.M.P. (MD) .No.2408 of 2019

1.E.Leela
2.E.B.Raja
3.E.Vijaya
4.E.Latha

... Petitioners/Respondents 1 to 3 & 5/
Defendants 2 to 4 & 6

Vs.

1.A.Ayyasamy

... 1st respondent/Petitioner / Plaintiff

2.E.Jeya

... 2nd respondent/4th respondent /
5th defendant

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 11.10.2018 passed in I.A.No.68 of 2018 in O.S.No.391 of 2017 by the Principal Subordinate Court, Tirunelveli.

For petitioners : Mr.T.Selvan
For 1st respondent : Mr.C.Ramesh

ORDER

This Civil Revision Petition has been filed by the petitioners challenging the order dated 11.10.2018 passed in I.A.No.68 of 2018 in O.S.No.391 of 2017, whereby and whereunder the Court below has allowed the petition filed by the first respondent herein seeking to implead the petitioners herein and the 2nd respondent herein as the legal heirs of the deceased sole defendant.

2. The first respondent herein as plaintiff has filed the suit in O.S.No.391 of 2017 against the sole defendant by name G.Edward Maharajan. During the pendency of the suit, the sole defendant died. Hence, the first respondent herein filed I.A.No.68 of 2018 seeking to implead the petitioners/respondents 1 to 3 & 5 and the 2nd respondent/4th respondent as legal heirs of the deceased sole defendant. The petitioners herein filed their counter affidavit stating that without serving notice to the 2nd respondent/4th respondent, the impleading petition cannot be ordered. On 11.10.2018, the Court below has allowed the impleading petition holding that there was sufficient representation on the side of the legal heirs of the deceased defendant and hence, the 4th respondent, though not served with notice, will not be prejudiced in any way. Challenging the same, the petitioners have filed this revision petition.



3. The learned counsel for the petitioners submitted that the 2nd respondent herein is residing in abroad and though the correct address of the 2nd respondent herein has been furnished through a memo, the first respondent herein purposefully evaded the same and the Court below, without considering the same and following the procedure, has straightaway ordered for substituted service after the return of the 1st summon to the local address. As the 2nd respondent has not been properly served, the Court below ought not to have allowed the impleading petition. Thus, he prayed to set aside the order dated 11.10.2018.

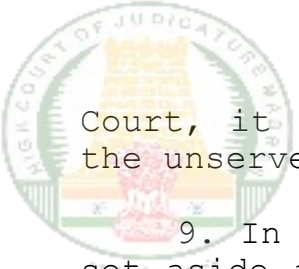
4. The learned counsel for the first respondent/plaintiff submitted that now the 2nd respondent herein entered appearance before the Court below and there is also a direction for early disposal of the case and therefore, the order passed by the Court below need not be interfered with.

5. Heard the learned counsel for the petitioners and the learned counsel appearing for the first respondent and perused the materials available on record.

6. It is seen that the Court below has not perused the records, especially counter affidavit filed by the petitioners herein properly. The Court below has not stated anything about the memo filed by the petitioners indicating the address where the 2nd respondent herein is residing. There is also no indication as to why notice has not been served to the correct address of the 2nd respondent herein.

7. The impugned order does not say anything about substituted service. According to the petitioners, the Court below, without following the procedures, has straightaway ordered substituted service. Before ordering substituted service under Order 5 Rule 20 of C.P.C., the Court has to satisfy either that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service or that for any other reason, the summons cannot be served in the ordinary way. Substituted service is an exception to the normal mode of service. Here, in this case, it is not known whether such procedure has been followed or not.

8. The reason stated by the Court below for allowing the impleading petition is that as there is sufficient representation on the side of the deceased sole defendant, the 2nd respondent herein will not be prejudiced, though notice not served. This Court is of the view that the said reason stated by the Court below is nothing but a flaw. It cannot be accepted for the simple reason that every one could have his own independent case and only after receipt of notice or proper service, they could know about the pendency of the proceedings and defend their case. Merely because some of the legal heirs of the deceased sole defendant appeared before the



Court, it cannot be concluded that no prejudice would be caused to the unserved party ie. the 2nd respondent herein.

9. In view of the above, the impugned order dated 11.10.2018 is set aside and the matter is remitted to the file of the Court below for fresh consideration. As it is represented that the 2nd respondent herein already entered appearance before the Court below, this Court is of the view that notice need not be ordered to the 2nd respondent by the Court below. It is needless to say that it is for the Court below to dispose of the case within the time stipulated earlier in accordance with law.

10. This Civil Revision Petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The Principal Subordinate Court,
Tirunelveli.

Copy to: The Section Officer,
VR Section, (2 Copies),
Madurai Bench of Madras High court, Madurai

+1 CC to Mr.T.SELVAN, Advocate (SR-80107[F] dated 06/08/2019)

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