



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.12.2019

CORAM

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THE HONOURABLE **MRS. JUSTICE R. THARANI**

C.R.P. (MD) No.1246 of 2019
and C.M.P. (MD) Nos.6941 & 6942 of 2019

1.Udayarani
2.Rathi Devi
3.Ramya @ Sujitha

... Petitioners/Respondents 8 to 10/
LRs of deceased 6th Defendant

Vs.

1.Rajeswari
2.Annakodi
3.Thenimozhi
4.Chitradevi
5.Anbukkarasi
6.Kanagaraj
7.Vallalathevan

... 1st Respondent/ Petitioner/ Plaintiff

... Respondents 2 to 7/ Respondents 1 to 5,7/
Defendants 1 to 5,7

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., to set aside the docket order dated 11.07.2019, made in E.P.No.47 of 2012 in O.S.No.33 of 2002 on the file of the District Munsif Court, Uthamapalayam.

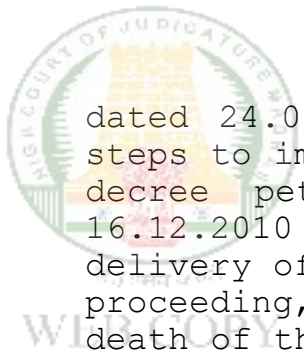
For Petitioners : Mr.R.Suriyanarayanan

For R1 : Mr.C.Gangai Amaran
R2 to R7 given up

ORDER

This Civil Revision Petition has been filed to set aside the order dated 11.07.2019 made in E.P.No.47 of 2012 in O.S.No.33 of 2002 on the file of the District Munsif Court, Uthamapalayam.

2.The petitioners are the legal heirs of the deceased sixth defendant in the suit. The first respondent is the plaintiff in the suit and she filed a suit for partition against three of her brothers. The petitioners are the legal heirs of the sixth defendant and the sixth defendant was set exparte. The suit was decreed. The first respondent/plaintiff filed a final decree petition in the year 2003. After the death of the sixth defendant,



dated 24.01.2004, the first respondent/plaintiff did not take any steps to implead the legal heirs of the sixth defendant in the final decree petition. The final decree petition was allowed on 16.12.2010 and the first respondent/plaintiff filed a petition for delivery of possession in E.P. No.47 of 2012. Even in the execution proceeding, the first respondent/plaintiff did not mention about the death of the sixth defendant. Later, the respondent filed E.A.No.74 of 2018 to implead the legal heirs of the deceased sixth defendant and that petition was allowed. The revision petitioners filed this revision petition against that order.

3.On the side of the petitioners, it is submitted that no decree can be passed against a dead person. Impleading the legal heirs at a later stage, will not give any retrospective effect and the impugned order is to be set aside and consequently, the matter is to be remitted back to the Court below for fresh consideration, since the final decree proceeding is abated due to the death of the sixth defendant.

4.On the side of the respondents, it is submitted that a preliminary decree was passed on 25.02.2003 and order in final decree proceeding was passed on 16.02.2010 and execution proceeding for delivery was initiated on 24.02.2012. Notice was sent to the respondents on 14.12.2012 and delivery was ordered on 11.04.2019. Only at that stage, the first respondent/plaintiff came to know about the death of the sixth defendant and the first respondent/plaintiff filed a petition in E.A.No.74 of 2018 to implead the legal heirs.

5.It is seen that, during the pendency of the final decree proceeding, the sixth defendant died, on 24.01.2004. The final decree proceeding was ordered on 16.02.2010 without impleading the legal heirs of the sixth defendant. Final decree order against the death person is not correct, subsequently, the proceedings in E.P.No.47 of 2012 also become invalid.

6.In the above circumstances, in the interest of justice, it is decided that the order in E.P.No.47 of 2012 is to set aside and the matter is to be remitted back to the lower Court for impleading the legal heirs of the deceased sixth defendant. The order in the final decree proceeding in I.A.No.571 of 2003 is set aside, the final decree petition is re-opened and the matter is remitted back to the learned District Munsif Court, Uthamapalayam, for fresh consideration. The learned District Munsif, Uthamapalayam is directed to dispose of the final decree proceeding, after impleading the legal heirs of the deceased 6th defendant in accordance with law, within a period of five months from the date of receipt of a copy of this order.

<https://hcservices.ecourts.gov.in/hcservices/> In compliance with the above directions, this civil revision petition is



disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

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/ /2020

Sub Assistant Registrar(CS)

gns

To

The District Munsif , Uthamapalayam.

+1 CC to M/s.R.SURIYANARAYANAN, Advocate (SR-103157[F] dated 03/12/2019)

+1 CC to M/s.C.GANGAI AMARAN, Advocate (SR-103397[F] dated 04/12/2019)

C.R.P. (MD)No.1246 of 2019

KK/SAR/09.01.2020/3P-4C/