



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.10.2019

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (MD) (PD) Nos.1809 and 1810 of 2019
and

CM.P. (MD) No.9302 of 2019 in C.R.P. (MD) No.1809 of 2019

L.G.Balakrishnan (Died)

1.L.G.B.Manivannan

L.G.B.Saravanan (Died)

L.G.B.Selvi (Died)

2.E.Shanthi Ellappan

3.S.Gayathri

4.Minor S.Kavyasri

5.Minor S.Keerthisri

:Petitioners/Petitioners/
Defendants 2,5 to 7 in both cases

(Minor 4 and 5 represented by their Mother and Next Friend,
the third petitioner)

vs.

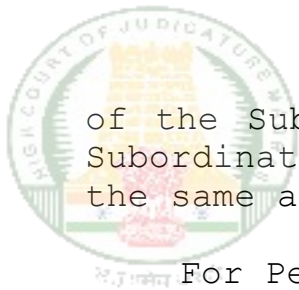
Rajeswari (Died)

K.Kesavan

:Respondent/Respondent/Plaintiff
in both cases

PRAYER in C.R.P. (MD) No.1809 of 2019: Civil Revision Petition filed under Article 227 of Constitution of India, to call for the records relating with the docket order, dated 12.09.2019 in unnumbered I.A.SR.No.2513 of 2019 in O.S.No.16 of 2014 on the file of the Subordinate Court, Periyakulam, and to direct the learned Subordinate Judge, Periyakulam, to number it and to proceed with the same as accordance with law.

PRAYER in C.R.P. (MD) No.1810 of 2019: Civil Revision Petition filed under Article 227 of Constitution of India, to call for the records relating with the docket order, dated 26.09.2019 in unnumbered I.A.SR.No.2630 of 2019 in O.S.No.16 of 2014 on the file



of the Subordinate Court, Periyakulam, and to direct the learned Subordinate Judge, Periyakulam, to number it and to proceed with the same as accordance with law.

For Petitioners in both cases

:Mr.R.Suriya Narayanan

For Respondent in both cases

:No Appearance

COMMON ORDER

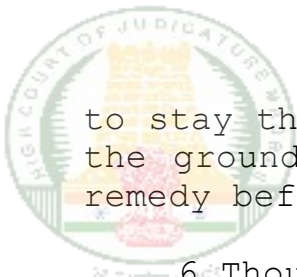
These Civil Revision Petitions have been filed by some of the defendants in the suit in O.S.No.16 of 2014 pending on the file of the Subordinate Court, Periyakulam.

2.The respondent's mother originally filed a suit in O.S.No.16 of 2014 for recovery of money on the basis of a pro-note alleged to have been executed by the father of first petitioner. During the pendency of the suit, the father of first petitioner died and the petitioners and other legal heirs were impleaded as parties to the suit. The petitioners herein have been impleaded as defendants 2, 5 to 7 in the suit as legal heirs of first defendant.

3.During the pendency of the suit, the fourth defendant in the suit, sister of first respondent, namely, L.G.B.Selvi, died. The respondent herein filed a petition in I.A.No.319 of 2018 to implead the husband of the fourth defendant as her legal heir in the suit. It is not in dispute that the husband is the legal heir of the deceased fourth defendant. When the application to implead the husband of the deceased fourth defendant is pending, the petitioners herein filed an interlocutory application in I.A.SR.No.2513 of 2019 in O.S.No.16 of 2014 under Order 22 Rule 4 of C.P.C., to implead them as legal heirs of the deceased fourth defendant and to permit them to conduct the case.

4.The revision petitioners also filed another interlocutory application in I.A.SR.No.2630 of 2019 in O.S.No.16 of 2014 to stay the proceedings in I.A.No.319 of 2018 in O.S.No.16 of 2014 on the ground that the application filed by the petitioners to implead them as legal heirs representatives of the deceased fourth defendant is pending.

5.The first application filed by the petitioners to implead them as parties was returned by the lower Court by raising a doubt as to the maintainability of the petition to implead the petitioners as legal heirs, as the petition filed by the plaintiffs to implead the husband of the fourth defendant as her legal heirs is already filed and pending. The latter application



to stay the proceedings in I.A.No.319 of 2019 was also returned on the ground that the petition is not maintainable, as they have a remedy before higher forum.

6. Though the application was returned or rejected *in limine* without numbering the application, this Court is of the view that the petitions filed by the petitioners are not necessary. First of all, the suit in O.S.No.16 of 2014 is a suit filed by the respondent's mother for recovery of money as against the father of first petitioner. The suit is based on a pro-note alleged to have been executed by the father of first petitioner. The sole defendant in the suit in O.S.No.16 of 2014, namely, the father of first petitioner, died during the pendency of the suit and all the children of first defendant were impleaded as legal heirs of deceased defendant. The petitioners have been brought on record as legal heirs of the deceased defendant. Subsequently, the fourth defendant in the suit, who is also one of the daughters of the original defendant, died. Hence, the petitioners who are already on record, need not be impleaded once again, as legal heirs of the deceased fourth defendant.

7. When it is admitted that the petitioners herein are already on record, it is not necessary that the petitioners should also be impleaded as legal heirs of the deceased fourth defendant. The persons, who were already brought on record, can also file a petition to record them as legal heirs of deceased. However, the petition to implead the petitioners as necessary parties in the suit does not arise and it is futile to contend that the petitions filed by the petitioners are essential to establish their right as legal heirs of the deceased fourth defendant.

8. The learned Counsel for the petitioner submitted that the fourth defendant has bequeathed several properties to the petitioners by a Will. The learned Counsel also submitted that several properties of father during his life time were changed in favour of the fourth defendant and that the fourth defendant acquired certain properties both in her name as well as in the name of her husband. It is in the factual background, the learned Counsel for the petitioner contended that the question whether the petitioners are entitled to bring on record as legal heirs of the deceased fourth defendant assume more importance and that the lower Court, on an erroneous appreciation of facts, returned the applications without noticing the legal implications or further complications that may arise to the petitioners, who are expected to establish their case, against the husband of the fourth defendant in a suit filed by them, in respect of properties of fourth defendant.

9. Assuming that the contentions of the learned Counsel for the



petitioner is accepted, the fact remains that the petitioners are already on record and no further order is required to make them as parties to the proceedings. The question, whether the petitioners are also the legal heirs of the deceased fourth defendant, is a matter that will be decided finally in the suit filed by the petitioners themselves. In a case where, an issue arises as to the entitlement of person to come on record as legal heirs of the deceased party, the Court is expected to decide. However, the said decision is only summery in nature, as reiterated in several precedents.

10.Having regard to the peculiar circumstances of the case, this Court go one step further to protect the interest of the petitioners herein. Any order that may be passed in the interlocutory applications filed by the petitioners and in I.A.No.319 of 2018 in O.S.No.16 of 2014 shall be without prejudice to the rights and contention of the petitioners to claim their status as legal heirs of the fourth defendant in the suit in O.S.No.16 of 2014. Any order or observation made by this Court or the order returning the application filed by the petitioners before the lower Court, shall not be construed as an order or decision on merits, with regard to the legal status of the petitioners as legal heirs of the deceased fourth defendant.

11.The suit filed by the petitioners in O.S.No.85 of 2019 on the file of the District Court, Theni, shall be decided independently. Having regard to the grievances expressed by the petitioners, this Court has no hesitation to hold that the revision petitions are unnecessary as the petitioners' only grievance is addressed by this Court in the previous paragraph.

12.As a result, these Civil Revision Petitions are dismissed as devoid of any merits and the order passed by the lower Court in I.A.SR.No.2513 of 2019 in O.S.No.16 of 2014, dated 12.09.2019 and I.A.SR.No.2630 of 2019 in O.S.No.16 of 2014, dated 26.09.2019 are confirmed subject to the observation made above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

cmr

<https://hcservices.ecourts.gov.in/hcservices/>



To

The Subordinate Judge, Periyakulam.

+1 CC to M/s.R.SURIYANARAYANAN, Advocate (SR-91735[F] dated 14/10/2019)

C.R.P. (MD) (PD) Nos.1809 and 1810 of 2019
10.10.2019

KM/ (30.10.2019) 5P 3C