

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.08.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.R.P (PD).No.3804 of 2010

1.Tmt.H.Rukumani
2.Minor H.Saravanan
Son of Late Halldurai
rep. By mother and guardian
Tmt.H.Rukumani ... Petitioners/Plaintiff

...Vs...

1. Mitchiammal (died)
2. Muthumani
3. Indira
4. Rajeshwari
5. Kavitha
6. The Regional Manager,
Indian Overseas Bank,
Anna Salai, Chennai-2.
7.The Branch Manager,
IOB, Race Course Branch
Coimbatore.
8. The Assistant Director
Ex.Service Mens Welfare Dept.
Jawans Bhavan, Coimbatore-18.
(R2 to R5 LR's of the deceased R1
as per the memo dated 12.11.2019
and vide Court order
dated 12.11.2019) ... Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the
Constitution of India against the order dated 6.11.2009 made in
I.A.No.347 of 2008 in O.S.No.4302 of 2004 on the file of III

Additional Judge, District Munsif Court, Coimbatore.

For Petitioner : Mr.K.V.Sundararajan
For Respondents : Ms.Ananda Gomathy Sivakumar (R7)
Mr.Aravind Ghosh (R8)
Government Advocate
Mr.V.Nicholas (R2)
No appearance

ORDER

This Civil Revision Petition has been filed against the order and decree dated 6.11.2009 made in I.A.No.347 of 2008 in O.S.No.4302 of 2004 on the file of III Additional Judge, District Munsif Court, Coimbatore.

2. The case of the petitioners is that Petitioners filed a suit against the respondents in O.S.No.4302 of 2004 on the file of learned District Munsif, Coimbatore for declaration to declare the plaintiffs 1 and 2 as legal heirs being the legally wedded wife and legitimate son of the deceased Hall Durai. In the said suit, the second defendant filed the written statement which was adopted by the defendants 3 to 5 and the eighth defendant also filed the written

statement. After filing of the written statement, the first petitioner came to know that there was no divorce granted legally to the Hall Durai and the second defendant. Therefore, she sought to amend the prayer in the suit to declare that the plaintiffs are entitled to equal shares along with the defendants as wife and son as well as the legal heirs of the deceased Hall Durai by filing the application in I.A.No.347 of 2008. The said application was dismissed by the trial Court vide order dated 06.11.2009. Challenging the same, the petitioners/plaintiffs are before this Court by way of this Revision.

2.The learned counsel for the petitioners would submit that the petitioners actually filed a suit for declaration to declare the plaintiffs 1 and 2 as legal heirs being the legally wedded wife and legitimate son of the deceased Hall Durai. After the defendants entered appearance, the second defendant as well as the eighth defendant filed written statement stating that the first defendant is the mother and the second defendant is the legally wedded wife of the deceased Hall Durai and so far no divorce has been granted by the competent Court and the first petitioner is not the legally wedded wife of the deceased Hall Durai. Therefore, the first petitioner after coming to know of the fact that no divorce was granted by the competent Court wanted to amend the prayer in the

plaint to the effect that they are also legal heirs of the deceased Hall Durai and they are also entitled to ½ share in the benefits of Hall Durai. The learned trial judge failed to consider the same and dismissed the application filed by the petitioners. The learned counsel for the petitioners would further submit that even assuming that there was no divorce granted by the competent Court to the second defendant and the deceased Hall Durai, the second petitioner is the son of the Hall Durai and he is also entitled to ½ share in the retirement benefits of Hall Durai. However, legal rights of the parties and the status of the parties can be decided in the suit. He would further submit that after amending the prayer there is no change of character of the suit and cause of action and it is much lesser than the original relief sought for in the plaint and therefore prays to allow this Revision.

3. Heard the learned counsel for the petitioner. Perused the materials available on record.

4. Admittedly, the petitioners failed a suit against the respondents herein in O.S.No.4302 of 2004 on the file of District Munsif Court, Coimbatore and subsequently filed an application in I.A.No.347 of 2008 to amend the prayer in the plaint. The said

petition was dismissed by the trial Court, against which the present revision has been filed. A careful perusal of the records would go to show that the petitioners originally filed a suit against the respondents for declaration to declare the plaintiffs 1 and 2 as legal heirs being the legally wedded wife and legitimate son of the deceased Hall Durai. The second defendant filed written statement denying the relationship of the parties and the marital status of the first petitioner. Therefore, she filed I.A.No.347 of 2004 to amend the prayer in the plaint to declare that the petitioners are entitled to equal shares along with the defendants as the wife and son as well as legal heirs of the deceased Hall Durai. This Court is of the view that the amendment sought for does not change the cause of action and also does not introduce a new case. Whether the petitioners are legal heirs of deceased Hall Durai is the matter to be decided in the trial. If the amendment is allowed no prejudice would be caused to the respondents/defendants and it is for the petitioners/plaintiffs to establish that the first petitioner is legally wedded wife of the Hall Durai and the second petitioner is the legitimate son of deceased Hall Durai and they are entitled to get equal shares in the retirement benefits of the Hall Durai and the Court can decide by recording the evidence after amending the plaint. The respondents can file the additional written statement, if they so desires.

5. Under these circumstances this Court is of the view that there is no perversity in the order passed by the trial Court. In the interest of justice and in order to avoid multiplicity of proceeding, the order passed by the trial Court in I.A.No.347 of 2008 in O.S.No.4302 of 2004 is set aside and the Revision is allowed. However, since the suit is of the year 2004, the trial Court is directed to dispose of the suit within a period of six months after completing the formalities in accordance with law. No costs.

04.08.2020

Index : Yes/No
Internet : Yes/No
arr

To

- 1.The III Additional District Munsif Court, Coimbatore.**
- 2. The Section Officer, V.R.Section, High Court, Madras.**

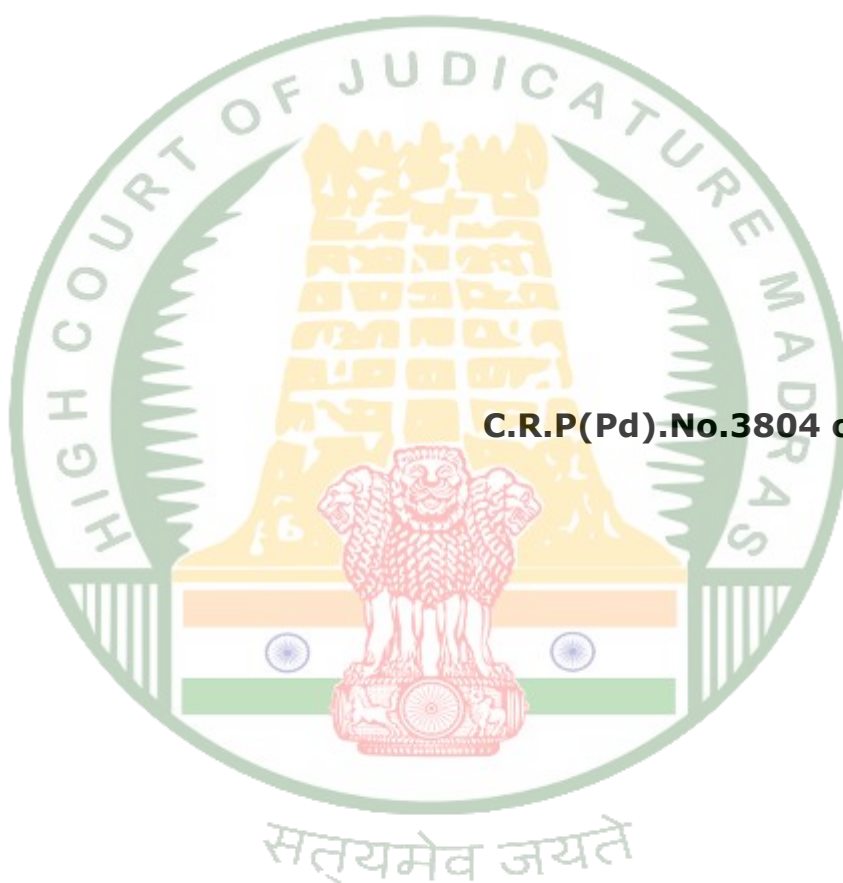
सत्यमेव जयते

WEB COPY

C.R.P.(pd)No.3804 of 2010

P. VELMURUGAN, J.

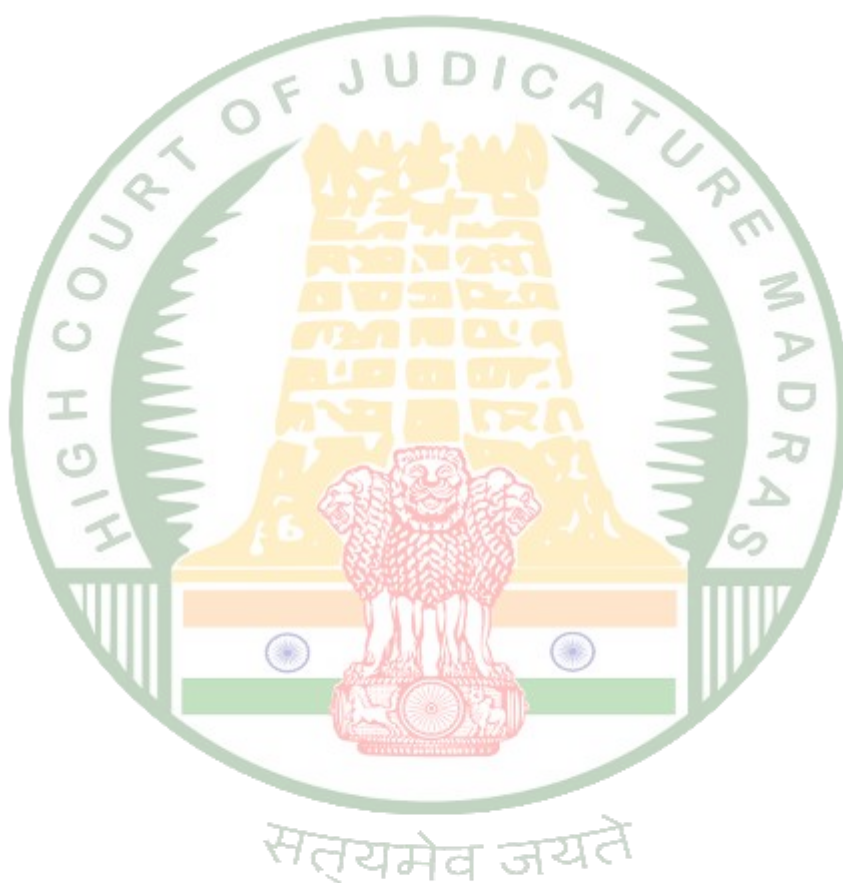
arr



C.R.P(Pd).No.3804 of 2010

WEB COPY

04.08.2020



WEB COPY