

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).Nos.2769 & 2770 of 2011
and M.P. Nos.1 & 1 of 2011

- 1.A.V.Arumugam (Deceased)
- 2.Saraswathi (Deceased)
- 3.Velliyangiri (Deceased)
- 4.Rani
- 5.V.Gautham
- 6.Pravin Chandra

... Petitioners

(petitioners 2 and 3 brought on record as Lrs of the deceased 1st petitioner vide order of Court dated 14.07.2017 made in M.P.No.3/2014 in C.R.P.No.2769 of 2011)

(petitioners 4 to 6 were brought on record as Lrs of the deceased 2nd petitioner vide order of Court dated 07.08.2020 made in C.M.P.Nos.8845 to 8846/2019 in C.R.P.No.2769 of 2011)

Vs

P.Ravichandiran (died)

1.R.Chitra

2.Minor Ranjitha

3.M/s. Mahalakshmi & Co.,

rep. By its Partner,

Ravichandiran,

7th Street, Agilmedu,

Erode 1.

4.P.Viswanathan

P.Sethupathi (Deceased)

5.P.Dhanasekar @ Thambi

6.Lakshmiyammal

7.T.Saroja Thandavan

8.K.Dhanabakiyam @ Baby

(minor 2nd respondent rep. By her

natural guardian and mother R.Chitra)

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final orders dated 24.03.2011 made in I.A.Nos.554 & 555 of 2010 in O.S.No.10 of 1995 on the file of the II Additional Sub Court, Erode, Erode District.

For Petitioners : Mr. A. Sundaravadhanan

For Respondents : Mr. S. Saravanan (For RR1,2, 4 to 6)
for M/s. D. Balachandran

Dismissed vide Court order
dated 17.07.2018 (For R3)

No appearance (RR7 & 8)

COMMON ORDER

The matter is heard through "Video Conferencing".

These Civil Revision Petitions are filed to set aside the fair and final orders dated 24.03.2011 made in I.A.Nos.554 & 555 of 2010 in O.S.No.10 of 1995 on the file of the II Additional Sub Court, Erode, Erode District.

2.The issue involved in both the Civil Revision Petitions are interlinked and the parties are one and the same. Hence, they are disposed of by this common order.

3.The 1st petitioner is the plaintiff in O.S.No.10 of 1995 on the file of the II Additional Sub Court, Erode, Erode District. He filed the said suit for recovery of money against the defendants therein. The suit was decreed exparte on 01.07.1999. The deceased P.Ravichandiran and respondents 1 and 2 filed I.A.Nos.18 and 113 of 2009 to condone the delay of 3513 days

in filing the petition to set aside the exparte decree dated 01.07.1999. Both the petitions were allowed. The 1st petitioner filed I.A.Nos.154 and 155 of 2009 to set aside the said two orders. While I.A.Nos.154 and 155 of 2009 were pending, the 1st petitioner filed I.A.Nos.554 and 555 of 2010 to amend the short cause title and docket sheet add the wordings “after the death of one P. Sethupathi/4th respondent in the suit”. The respondents opposed the said petitions. The learned Judge dismissed both the petitions.

4. Against the said orders of dismissal dated 24.03.2011 made in I.A.Nos.554 & 555 of 2010 in O.S.No.10 of 1995, the 1st petitioner has come out with the present two Civil Revision Petitions. Pending Civil Revision Petitions, the 1st petitioner died and the petitioners 2 & 3 were impleaded as his legal heirs. Subsequently, after the death of the 2nd petitioner, the petitioners 4 to 6 were impleaded as her legal heirs.

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5. The learned counsel appearing for the petitioners submitted that

the amendment petitions are filed to record the death of P. Sethupathi/4th respondent in the suit, and to bring on record his mother being the 8th respondent herein as legal heir of deceased P.Sethupathi/6th respondent. The learned Judge having permitted the respondents 1 and 2, without permission of the Court to substitute the partner of the 1st defendant, erred in casting the burden on the petitioners to record the death of the 2nd defendant. The learned Judge ought to have allowed the petitions which were filed to record the death of the P.Sethupathi/4th respondent in the suit and to bring on record the 8th respondent herein as his legal heir. The learned Judge ought to have considered the petitions filed by the 1st petitioner for amendment liberally and prayed for setting aside the orders of the learned Judge and allowing both the Civil Revision Petitions.

6.The Civil Revision Petitions are dismissed against the 3rd respondent vide order of this Court dated 17.07.2018. Though notice has been served on the respondents 7 and 8 and their names are printed in the cause list, there is no representation for them either in person or through

counsel.

7.The learned counsel appearing for the respondents 1, 2 and 4 to 6 contended that the respondents filed memo in the suit informing the death of P. Sethupathi,4th respondent in the suit. The petitioners did not take any steps to bring on record the legal heirs of the deceased P.Sethupathi. The learned Judge has rightly dismissed the petitions, as the suit against the deceased P.Sethupathi is abated. The petitioners have not given any reason for not filing the petitions earlier and prayed for dismissal of both the Civil Revision Petitions.

8.Heard the learned counsel appearing for the petitioners as well as the respondents 1, 2 and 4 to 6 and perused the materials available on record.

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9.From the materials on record, it is seen that the 8th respondent

herein is the mother of the deceased P. Sethupathi/4th respondent in the suit. She is already on record as one of the defendants in the suit. When the said P.Sethupathi/4th respondent in the suit died, the suit will not be abated, even if the petitioner has not taken steps to bring the legal heir of the deceased 4th respondent in the suit on record, as the mother of the deceased 4th respondent in the suit is already on record. It is sufficient to file a memo to record the 8th respondent herein as legal heir of the deceased P.Sethupathi /4th respondent in the suit, as well as in I.As. pending before the Court. The petitioners have filed the present two Civil Revision Petitions to amend the short cause title and docket sheet to record the death of the P.Sethupathi/4th respondent in the suit and record the 8th respondent herein as his legal heir. The learned Judge without considering the facts that the legal heir of the deceased P.Sethupathi is already on record, erred in holding that the suit is abated as the petitioners have not taken steps within 30 days from the date of death of the said P.Sethupathi. In view of this error, it is clear that the learned Judge has committed an irregularity in dismissing the I.As. For the above reason, the

orders of the learned Judge is set aside and I.A.Nos.554 & 555 of 2010 are allowed. The petitioners are given four weeks times to carry out the necessary amendment and to file the amended copies.

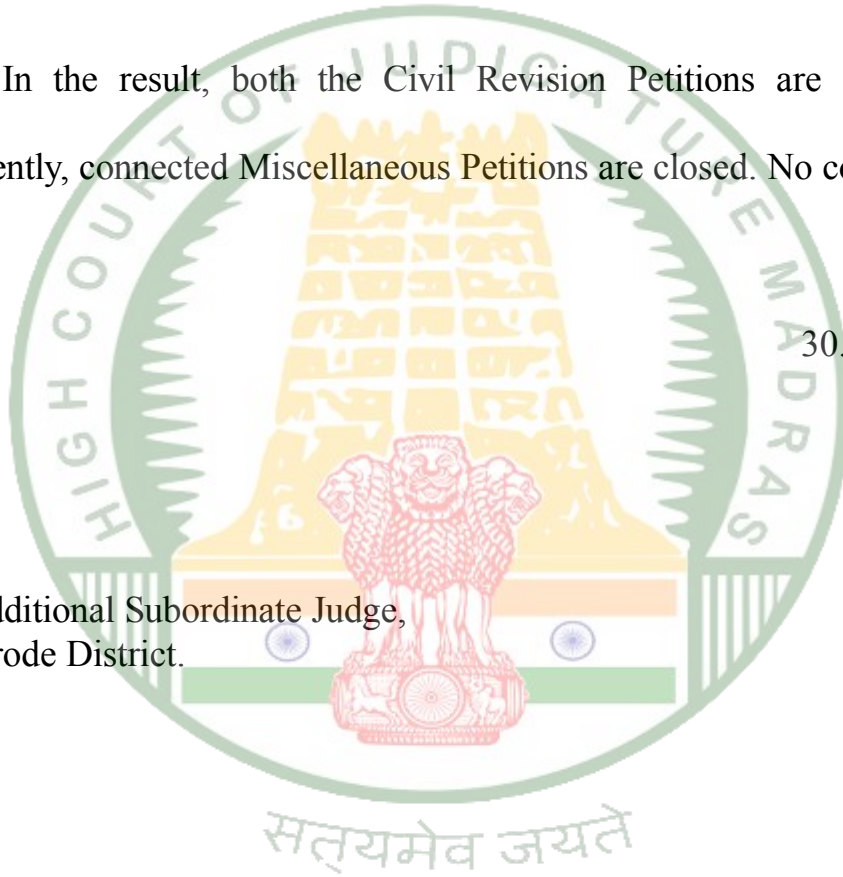
10.In the result, both the Civil Revision Petitions are allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.

30.09.2020

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To

The II Additional Subordinate Judge,
Erode, Erode District.

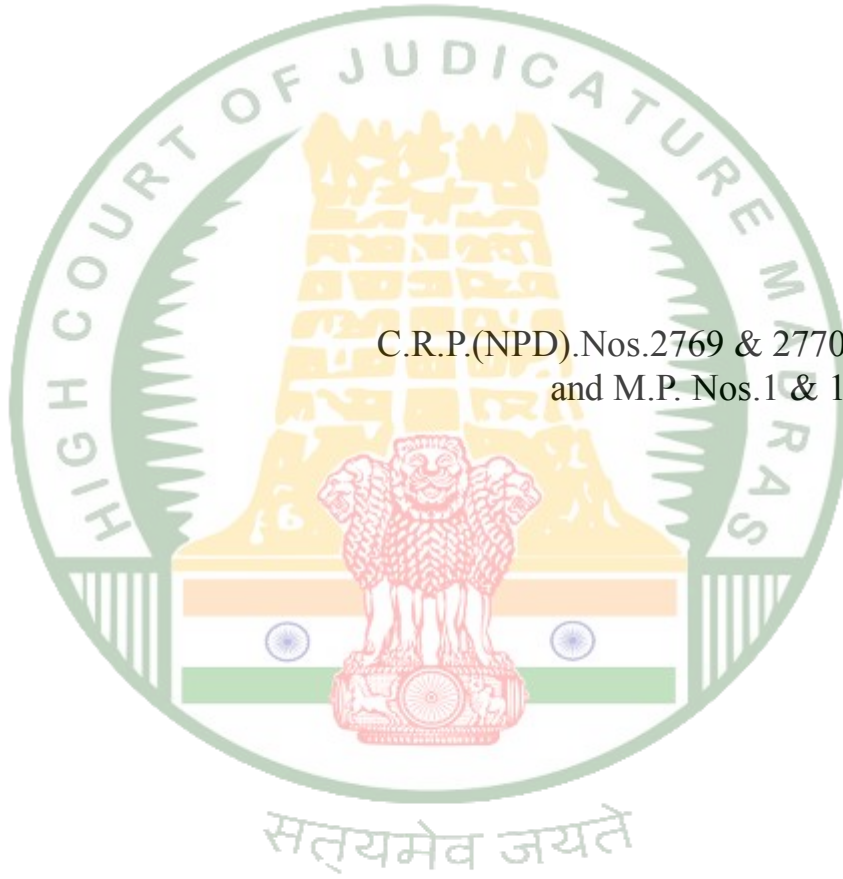


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V.M.VELUMANI, J.

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