

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.03.2020

Pronounced on : 23.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(NPD)No.2721 of 2015

and

M.P.No.1 of 2015.

1. Mr.V.Sundar
Rep. by his Power Agent
Mr.R.Veerappan

2. Mrs.Tilaka Joseph

... Revision
Petitioners/Plaintiffs

versus

1. Mrs.R.Loganayagi
2. Mr.Duraikabali (died)

... Respondents/Defendants

Civil Revision Petition filed under Section 115 of C.P.C. seeking to set aside the fair and decreetal order dated 05.08.2014 passed by the learned District Munsif, Tambaram, in I.A.No.85 of 2013 in O.S.No.342 of 2002.

For Revision Petitioners : M/s.L.Mouli
For Respondents : Mr.A.Palaniappan for R1
R2- died

ORDER

The revision petitioners herein are the plaintiffs in O.S.No.342 of 2002. The respondents herein are the defendants.

2. Originally, the first defendant/first respondent herein is the owner of the properties having an extent of 2 acres and 18 cents in various Survey Numbers at No.164, Pulikorabu Village, Saidapet Taluk, Chengalpet District. She entered into an agreement for sale of the said properties with the first plaintiff, second defendant and one K.Ponnuswamy on 24.05.1982. Subsequently, on 02.08.1982, supplemental agreement has been entered into between the first defendant and the first plaintiff along with the second defendant, substituting the second plaintiff in the place of K.Ponnuswamy.

3. After the sale agreement, the plaintiffs/revision petitioners came to know that there was a tentative proposal by the Government to acquire an extent of 7 ½ cents and the first defendant/first respondent herein sold 30 cents out of 2 acres and 18 cents. Thereafter, the first defendant did not come forward to execute the sale deed. Therefore, the plaintiffs filed a suit in O.S.No.44 of 1986 before the Subordinate Court, Chengalpet, which was transferred to the file of the Subordinate Court, Poonamallee, for the relief of

specific performance in respect of 1 acre 80 ½ cents. Since the second defendant/second respondent herein (deceased now) did not join with the plaintiffs for filing the suit, he was shown as the second defendant at the time of filing the suit. Pending the suit, the Government, by Notification dated 11.02.1987, acquired 55 cents instead of 7 ½ cents. Therefore, the plaintiffs filed an interlocutory application in I.A.No.1106 of 1991 in O.S.No.44 of 1986, seeking to amend the plaint, amending the extent of properties as 1 acre 33 cents instead of 1 acre 80 ½ cents, which was allowed by the trial Court on 14.12.1995. After allowing the said application, amended plaint was taken on file. Thereafter, on pecuniary jurisdiction, the suit was transferred to the District Munsif, Tambaram and the suit in O.S.No.44 of 1986 was renumbered as O.S.No.342 of 2002.

4. While so, the suit was dismissed for non-payment of batta in respect of the second respondent, vide Judgment and Decree dated 15.06.2005. In the mean time, second defendant, a joint agreement holder and one of the beneficiary to the agreement, was reported dead. Therefore, the plaintiffs/revision petitioners, contending that the second defendant remained ex parte during the pendency of the suit and the main relief sought for in the suit is against only the first defendant, filed an Interlocutory Application in

I.A.No.85 of 2013 in O.S.No.342 of 2002 under Order XXII Rule IV of C.P.C., seeking exemption from impleading the legal heirs of the deceased second respondent/second defendant in the application filed to condone the delay of 2459 days in filing the application to restore the suit, which was dismissed for default on 15.06.2005.

5. Resisting the same, the first defendant/first respondent herein filed a counter, contending that the second defendant died even during the pendency of the suit and the plaintiffs failed to bring the legal heirs on record and also did not take any steps to pay batta for issuance of summons to the second defendant, therefore, the suit was dismissed by the trial Court for default as against the second defendant. Further, the relief sought for in the suit by the plaintiffs as the beneficiary of the suit agreement and supplemental agreement and if any decree is passed, it would affect the interest of the legal heirs of the deceased second defendant and therefore, the legal heirs of the deceased second defendant are necessary parties to the suit.

6. Considering the rival submissions, the Interlocutory Application filed by the plaintiffs/revision petitioners herein seeking exemption from impleading the legal heirs of the deceased second defendant was dismissed as

not maintainable and therefore, the plaintiffs are not entitled to the benefit of provisions under Order XXII Rule IV of CPC. Aggrieved over the same, the plaintiffs filed this Civil Revision Petition.

7. Heard Mr.L.Mouli, learned counsel for the plaintiffs/revision petitioners and Mr.M.Palaniappan, learned counsel for the first defendant/first respondent.

7. The learned counsel for the plaintiffs/revision petitioners submitted that when the suit was pending before the Subordinate Court, Poonamallee, the first defendant/first respondent herein filed his written statement and the second defendant/second respondent was set ex parte as early as in the year 1995 and the learned Subordinate Judge, Poonamallee, while deciding an application in I.A.No.1106 of 1991 has dispensed with the notice to the second respondent, since he remained ex parte in the suit. But, when the suit was transferred to the District Munsif Court, Tambaram, the Court below, had mistakenly posted the case for payment of batta in respect of the second defendant. Without considering the said fact, the trial Court, has wrongly dismissed the application filed under Order XXII Rule IV of C.P.C.

8. The learned counsel for the first defendant/first respondent submitted that the application filed to exempt from impleading the legal heirs of the second defendant was filed as a delaying tactics, instead of giving up the second defendant and it would later pave the way to drag on the proceedings through the legal heirs of the second defendant. When the suit was dismissed as against the second defendant for non payment of batta and even before summon was served on the second defendant, the application filed under Order XXII Rule IV C.P.C. does not arise and the suit is abandoned as against the second defendant.

9. The present interlocutory application was filed under Order XXII Rule IV C.P.C. Therefore, it is necessary to look into the provisions under Order XXII Rule IV C.P.C., which is extracted as under:

"The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place."

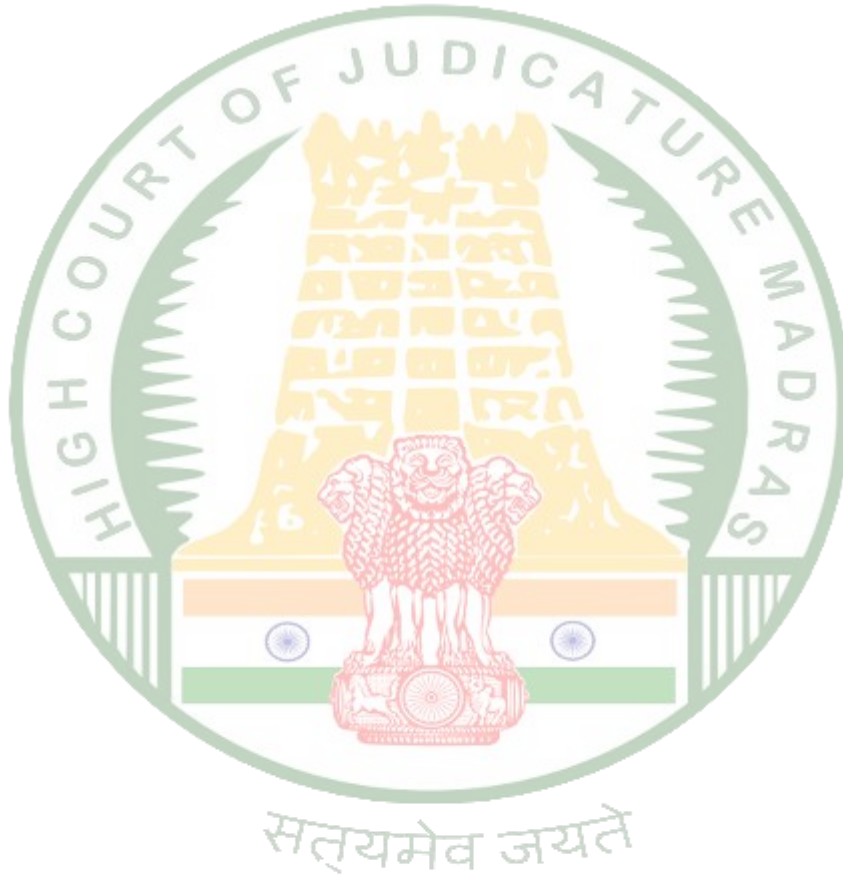
10. In the present case, the suit was filed in the year 1986. The second defendant is one of the beneficiary to the sale agreement. Since the second defendant has not shown any interest to file the suit with the plaintiffs, he was shown as the second defendant in the suit. Further, he remained ex parte in the suit by not appearing and contesting the suit. It is the case of the plaintiffs/revision petitioners that the second defendant/second respondent was set ex parte as early as in the year 1995 and the learned Subordinate Judge, Poonamallee, while deciding an application in I.A.No.1106 of 1991, has dispensed with the notice to the second respondent, since he remained ex parte in the suit. Therefore, the question of impleading the legal heirs of the deceased 2nd respondent/2nd defendant does not arise. Hence, the plaintiffs/revision petitioners are entitled to get benefits under Order XXII Rule 4 of Civil Procedure Code.

11. Accordingly, the Civil Revision Petition is allowed. The trial Court is directed to proceed with the trial and conclude the same as early as possible. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes / No
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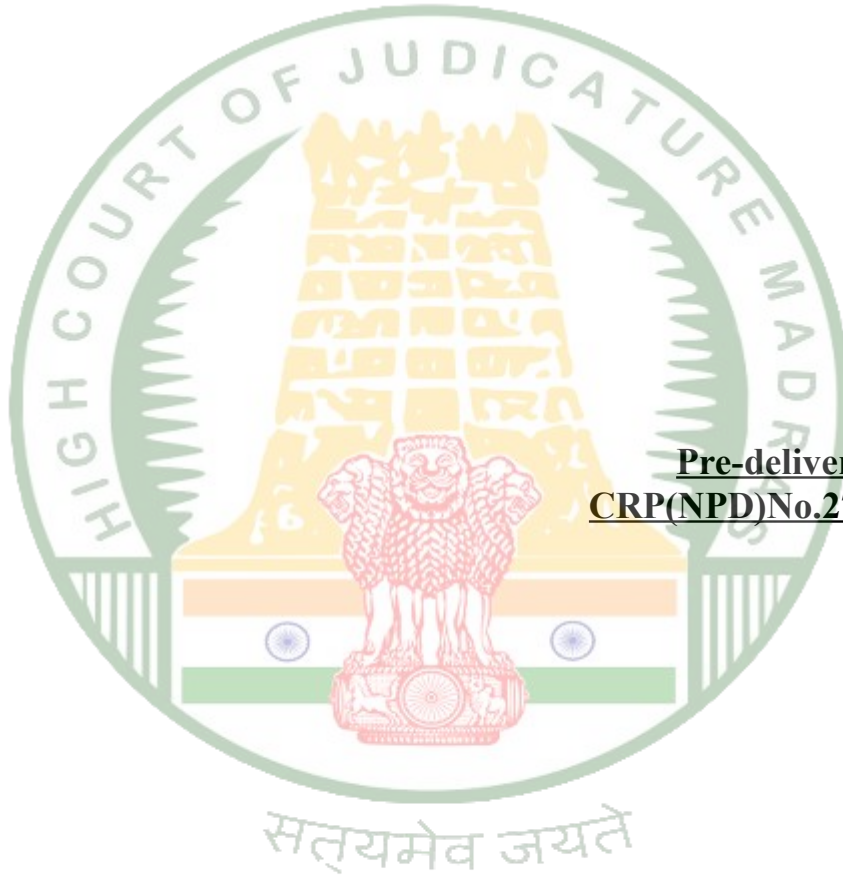
The learned District Munsif,
Tambaram,



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B.PUGALENDHI, J.

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Pre-delivery Order in
CRP(NPD)No.2721 of 2015

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