

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P.No.3904 of 2015

and

M.P.No.1 of 2015

Mrs. Saraswathi ammal

... Petitioner

Vs.

R. Selvaraj

1.S. Thilagavathi
W/o late Mr.R.Selvaraj

2. S. Buddhan
S/o late Mr.R. Selvaraj

3. S. Mathivanan
S/o late Mr.R. Selvaraj

4. Kousaki
D/o late Selvaraj

5. Gouthami
D/o late Selvaraj

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 27.01.2015 passed in I.A.No.111 of 2014 in O.S.No.234 of 2014 on the file of the District Munsiff-cum-Judicial Magistrate, Thirukazhukundram.

For Petitioners : Mr.K. Govi Ganesan

For Respondents : M/s Kumar Rajan and Kumar Bapkan

ORDER

This Civil Revision Petition has been filed by the respondents/defendants against the order passed in I.A.No.111 of 2014 in O.S.No.234 of 2014 dated 27.01.2015 on the file of the District Munsif-cum-Judicial Magistrate, Thirukazhukundram.

2.The first respondent herein namely R.Selvaraj had filed a suit in O.S.No.84 of 1987 on the file of the Sub Judge Chengalpattu against the petitioner herein for the relief of specific performance of the sale agreement dated 02.08.1986. Subsequently the said suit was transferred to the District Munisif cum-Judicial Magistrate, Thirukazhukundram and

renumbered as O.S.No.234 of 2014. During pendency of the said suit the sole plaintiff namely R.Selvaraj died and hence the respondents herein had filed an application in I.A.No.111 of 2014 under Order 22 Rule 3 of C.P.C to implead themselves as plaintiffs 2 to 6, in the said suit. The petitioner herein had filed counter stating that the deceased Selvaraj had a son by name Prabhu and he predeceased the said Selvaraj leaving his widow and 2 minor children and hence they also should be impleaded as legal heirs of the deceased Selvaraj. The learned District Munsif-cum-Judicial Magistrate, after considering the rival submissions by the order dated 27.01.2015 had rejected the objections raised by the petitioner herein as she has not produced any material to show that the deceased plaintiff had one more son by name Prabhu and finally allowed the said application. Feeling aggrieved, the defendant has filed the present C.R.P.

3. Heard both sides.

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4. The learned counsel for the petitioner has submitted that in the counter filed by the petitioner in I.A.No.111 of 2014, she has categorically stated that the deceased Selvaraj had one more son by name Prabhu and the said Prabhu had predeceased the said Selvaraj leaving

behind his widow and 2 children inspite of the said averments, the respondents herein have not taken any steps to implead the legal representatives of the said Prabhu. Without considering the said fact the Trial Court had allowed the application filed by the respondents to implead themselves as legal representatives of the deceased Selvaraj. He further submitted that as per Order 22 Rule 5 of C.P.C where a question arises as to whether any person is a legal heir of the deceased Plaintiff , the same has to be determined by the Court, but, in this case the learned Trial Court has not determined the said question and therefore he prayed to allow this C.R.P and set aside the order passed by the Trial Court and dismiss the application in I.A.No. 111 of 2014.

5. Though the petitioner herein had taken a plea that the deceased plaintiff Selvarah got one more son by name Prabhu and that the said Prabhu predeceased the said Selvaraj leaving behind his widow and 2 children, she has not furnished the name and address of the said widow and children of the deceased Prabhu Under Order 22 Rule 5 of C.P.C where a question arises as to whether any person is or is not the legal representative of the deceased plaintiff or defendant, such question shall be determined by the Court. In this case, the respondent herein/

defendant has not denies the fact that the respondents 2 to 6 are the legal representatives of the deceased Selvaraj. Her contention is that one more legal heir omitted to implead. But, she has not furnished the details of the said persons. The learned District Munisi after taking into consideration the aforesaid facts had allowed the said application.

6. It is also to be pointed out that the law does not say that all the legal heirs of the deceased should be impleaded as parties. The law says that only the legal representatives have to be impleaded as parties. As per Section 2(11) of C.P.C legal representatives includes any person who intermeddles with the estate of the deceased. Therefore, it is clear that all the legal heirs need not be impleaded. Any of the legal representatives can represent the estate of the deceased. In this case, the respondents 2 to 6 have come forward to represent the estate of the plaintiff Selvaraj. If there are any other legal heirs, it is always open to them to implead themselves as parties.

7. Therefore, this Court is of the view that there is no infirmity in the order passed by the Court below.

8. In the result this C.R.P. is dismissed. No costs. Consequently,
the connected miscellaneous petition is closed.

01.12.2020

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Index :Yes/No

Internet : Yes/No

To

The District Munsiff-cum-Judicial Magistrate,

Thiruzhukundram.

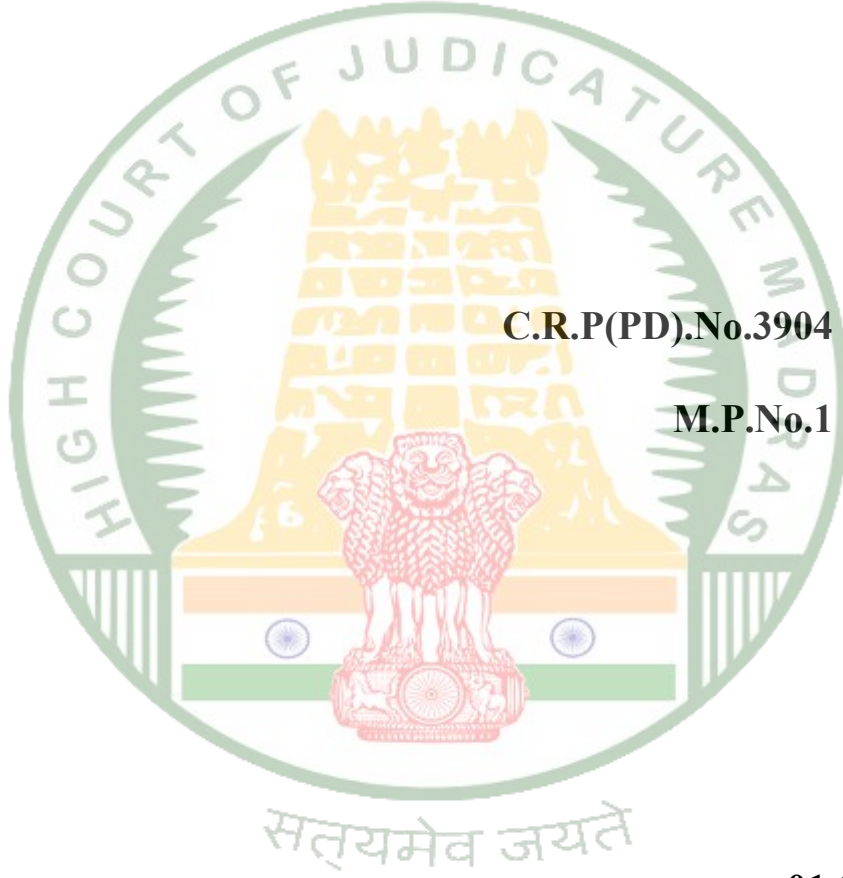


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P.RAJAMANICKAM.J.,

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and
M.P.No.1 of 2015**

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