

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).Nos.3896 and 3897 of 2013

and

M.P.Nos.1 of 2013 and 1 & 1 of 2015

R.Santhosh

.. Petitioner
(in both C.R.Ps)

Vs.

1.V.Radhakrishnan

2.Savithri

3.Rajiv Naidu

4.Vikraman @ Narendra Vikram Naidu

5.R.Kavitha

6.Minor. Riya R.Naidu

(Minor 6th respondent represented by her
mother, Natural guardian, R.Kavitha)

7.Minor. Diya R.Naidu

(Minor 7th respondent represented by
her father, Natural guardian,
Vikram @ Narendera Vikram Naidu)

8.Sivamani

.. Respondents
(in both C.R.Ps)

Prayer in C.R.P.3896 of 2013: This Civil Revision Petition is filed under Article 227 of Constitution of India praying to set aside the decreetal order in I.A.No.682 of 2013 in I.A.No.420 of 2013 in O.S.No.150 of 2013 dated 03.09.2013 on the file of the Sub Judge, Tambaram.

Prayer in C.R.P.3897 of 2013: This Civil Revision Petition is filed under Article 227 of Constitution of India praying to set aside the decreetal order in I.A.No.684 of 2013 in O.S.No.150 of 2013 dated 03.09.2013 on the file of the Sub Judge, Tambaram.

In both cases:

For Petitioner : Mr.V.Lakshminarayanan
for Mr.V.Raghavachari

For R1 : No appearance

For RR 2 to 8 : Mr.Vaibhav
for M/s.Nithyaesh & Vaibhav

COMMON ORDER

सत्यमेव जयते

The matter is heard through Video Conferencing.

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2.The issues involved in both the Civil Revision Petitions are interlinked and hence they are disposed of by this common order.

3.C.R.P.No.3896 of 2013 is filed to set aside the decretal order passed in I.A.No.682 of 2013 in I.A.No.420 of 2013 in O.S.No.150 of 2013 dated 03.09.2013 on the file of the Sub Court, Tambaram.

4.C.R.P.No.3897 of 2013 is filed to set aside the decretal order passed in I.A.No.684 of 2013 in O.S.No.150 of 2013 dated 03.09.2013 on the file of the Sub Court, Tambaram.

5.The petitioner is the third party to the suit in O.S.No.150 of 2013 on the file the Sub Court, Tambaram. The 1st respondent filed the said suit against the respondents 2 to 8 for declaration, mandatory injunction and permanent injunction. The petitioner filed three applications viz., I.A.Nos.682 to 684 of 2013 for impleading him as 8th defendant in O.S.No.150 of 2013 and 8th respondent in I.A.Nos.420 and 421 of 2013. The learned Judge dismissed all the three petitions. The petitioner filed two Civil Revision Petitions against the dismissal of I.A.No.682 of 2013 in I.A.No.420 of 2013 in O.S.No.150 of 2013 and I.A.No.684 of 2013 in O.S.No.150 of 2013.

6.At the time of hearing of the petitions, the learned counsel appearing for the respondents 2 to 8 submitted that the 1st respondent who is the plaintiff

in O.S.No.150 of 2013 died on 17.08.2015 and submitted that suit itself was abated and both the Civil Revision Petitions have become infructuous.

7.Mr.V.Lakshminarayanan, learned counsel appearing for the petitioner submitted that the petitioner is legal heir of the 1st plaintiff and he is on record and Civil Revision Petition is not abated. The learned counsel made various statements on merits of the impleading petitions. He further contended that the petitioner is on record in other capacity and therefore, the Civil Revision Petition has not become infructuous. To substantiate the said contention, the learned counsel appearing for the petitioner relied on the following judgments:

(i) *The Law Weekly, 1928 (Vol. XXVII), [V.Achuthan Nair and another Vs. Manavikraman alias Kunhettan Raja and another]*

10. *We do not think that, when the legal representatives for a deceased defendant or respondent are on record, an application to bring on the legal representatives within three months is necessary. It is enough if the plaintiff or appellant at some time or other before the hearing of the suit or appeal states the fact and gets it noted on the record.”*

(ii) **1969 (2) Supreme Court Cases 70, [Ratan Lal Shah Vs. Firm Lalmandas Chhadammalal and another]**

3. In our view the judgment of the High Court cannot be sustained,. The appeal could not be dismissed on the ground that Mohan Singh was not served with the notice of appeal, nor could the appeal be dismissed on the ground that there was a possibility of two conflicting decrees. Order XLI, Rule 4 of the Code of Civil Procedure provides :

'Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reserve or vary the decree in favour of all the plaintiffs or defendants, as the case may be.'

The object of the rule is to enable one of the parties to a suit to obtain relief in appeal when the decree appealed from proceeds on a ground common to him and others. The Court in such an appeal may reserve or vary the decree in favour of all the parties who are in the same interest as the appellant."

**(iii) 1971 (1) Supreme Court Cases 265, [Mahabir Prasad
Vs. Jage Ram and others]**

7. Even on the alternative ground that Mahabir Prasad being one of the heirs of Saroj, Devi there can be no abatement merely because no formal application for showing Mahabir Prasad as an heir and legal representative of Saroj Devi was made. Where in a proceeding a party dies and one of the legal representatives is already on the record in another capacity, it is only necessary that he should be described by an appropriate application made in that behalf that he 'is also on the record, as an heir and legal representative. Even if there are other heirs and legal representatives and no application for impleading them is made within the period of limitation prescribed by the *Limitation Act* the proceeding Will not abate. On that ground also the order passed by the High Court cannot be, sustained."

8. The learned counsel appearing for the petitioner also filed a memo stating that the petitioner is legal heir of the 1st respondent/plaintiff and is on record and the same may be recorded in both the Civil Revision Petitions.

9.Per contra, Mr.Vaibhav, learned counsel appearing for the respondents 2 to 8 contended that the 1st respondent/sole plaintiff died on 17.08.2015 itself and no steps were taken to bring the legal heirs on record as per Order XXII Rule 3 of C.P.C. On such failure, the suit has abated. In view of the same, both the Civil Revision Petitions have become infructuous and has to be dismissed. No steps were taken as per the provisions of C.P.C. to bring the legal heirs on record. The judgments relied on by the learned counsel appearing for the petitioner are not applicable to the facts of the case and the memo filed by the petitioner is devoid of merits and prayed for dismissal of both the Civil Revision Petitions.

10.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents 2 to 8 and perused the entire materials on record.

11.The petitioner has filed three petitions viz., I.A.No.682, 683 & 684 of 2013 to implead him as 8th respondent in I.A.Nos.420 & 421 of 2013 and as 8th defendant in O.S.No.150 of 2013. The suit is filed by the 1st respondent, father of the petitioner against the respondents 2 to 8 for declaration and

injunction. The petitioner is making various allegations against the respondents 2 to 4 and filed I.As and sought for impleading himself as party defendant in the suit and respondents in I.As on the ground that he has filed suit for partition against respondents 1, 3 and 4 in O.S.No.40 of 2008 and the same is pending before the Principal District Court, Chengalpattu and now the suit is transferred and the same is pending before the Fast Track Court, Chengalpattu. According to petitioner, unless he is impleaded as party in the suit and petitions, his interest would be affected. The learned Judge dismissed the I.As holding that petitioner is not a necessary party in the suit filed by the 1st respondent and petitioner can workout his remedy in the suit for partition filed by him in which the property in O.S.No.150 of 2013 is one of the item in O.S.No.40 of 2008. Pending Civil Revision Petition, the 1st respondent/plaintiff in the suit died on 17.08.2015. The petitioner or his mother have not taken any steps for bringing them as legal heirs of the 1st respondent/plaintiff.

12.As per Order XXII Rule 3(1) of C.P.C., when a sole plaintiff dies, the legal representatives of the said plaintiff may be recorded as party on the application made on their behalf and proceeded with their suit. As per Order XXII Rule 3 (2) of C.P.C., if no application is filed within the time limit as

per law, the suit abates as far as deceased plaintiff is concerned. In the present case, the 1st respondent / sole plaintiff died on 17.08.2015 and no application was filed for impleading the petitioner or his mother as legal heir of the deceased 1st respondent. No legal representatives were brought on record within the time limit as per law, the suit has abated. In view of the same, no order can be passed impleading the petitioner as party in the suit and as well as in the Interlocutory Application as no suit is pending before the learned Judge. The judgments relied on by the learned counsel appearing for the petitioner do not advance his case and hence, both the Civil Revision Petitions have become infructuous.

13.It is pertinent to note that petitioner is not a party in the suit or in the I.A. in any capacity. In the judgments 1 & 3 referred to above, relied on by the learned counsel appearing for the petitioner, the legal heirs of the deceased was party on record and therefore, the Court holds that proceedings are not abated. In the second judgment relied on by the learned counsel appearing for the petitioner, the Hon'ble Apex Court has dealt with the scope of Order XLI Rule 4 of C.P.C. In the present case, the scope of Order XLI is not an issue and therefore, all the three judgments relied on by the learned counsel appearing for the petitioner are not applicable to the facts of the

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present case.

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

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Index : Yes / No

Internet : Yes / No

To

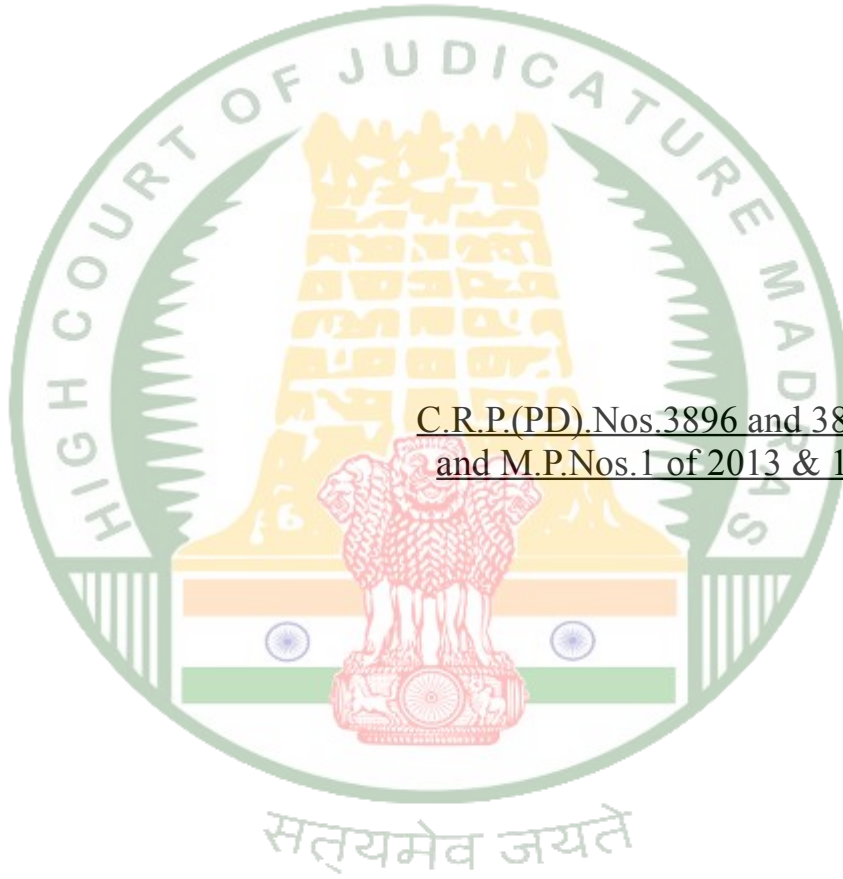
The Subordinate Judge,
Tambaram.



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V.M.VELUMANI, J.

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