

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2020

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Application No.1613 of 2020

in

C.S.No.186 of 2019

- 
1. Sri. T.S.Narayanan (dead)
(a person incapable by reason of
mental infirmity of protecting his
interest)
Rep. by his daughter and next friend
T.N.Alamelu ... Applicant-1/Deceased
Plaintiff
2. T.N.Alamelu ... Applicant/Proposed Plaintiff No.2
(Legal heir of deceased plaintiff)
- Vs.
1. Revathy
2. Kamala Narayanan
3. Peeyesym H.K.Motors LLP
Rep. by its Partner
P.S.Mohammed Hussain ... Respondents / Defendants

PRAYER : Application filed under Order XIV Rule 8 of O.S.Rules r/w Order I Rule 10 of C.P.C. to implead the Applicant herein viz., T.N.Alamelu, W/o P.B.Krishnan, 43 years residing at "Sreevatsam", Achutam Layout, LFC Road, Kaloor, Kochi 682 017 as Plaintiff No.2 in the suit.

For Applicant : Mr.T.R.Rajagopalan
Senior Counsel for
Mr.T.S.Baskaran

For Respondent No.1 : Mrs.Dhakshayini Reddy

ORDER

This application has been filed to implead the applicant as plaintiff in the suit, as the original plaintiff T.S.Narayanan died.

2. It is a peculiar situation where the suit is filed in the name of original plaintiff T.S.Narayanan represented by his only daughter T.N.Alamelu, as next friend since the plaintiff was in a state of mental infirmity, challenging the settlement deed said to have been executed in favour of his only son on 9.2.2017, 6.2.2017. The above settlement deed challenged by the father of the applicant viz., plaintiff on the ground that the executant is not in a fit state of mind to execute the documents. According to the applicant, the suit has been filed within a period of limitation.

3. Admittedly, father of the applicant viz., original plaintiff died intestate on 1.6.2020. Hence, the applicant has filed the instant application to

implead her as plaintiff in the suit. It is not in dispute that the first defendant is daughter in law of the original plaintiff and the second defendant is wife of the plaintiff.

4. The main objection of the counsel appearing for the respondent / first defendant is that there is no right to sue survives in this application since daughter only represented plaintiff as next friend and the settlement deed was executed by the father two years back. After his death, there is no right to sue survives to continue the suit by the next friend. According to the learned counsel appearing for the first respondent / first defendant, being a next friend, she cannot be impleaded as legal representative to continue the suit on behalf of the deceased. Therefore, the application is liable to be dismissed.

5. Perused the affidavit filed in support of the application, counter affidavit and the materials available on record.

6. As indicated above, the suit itself filed for cancellation of settlement deed executed by the original plaintiff T.S.Narayanan. The settlement deed was mainly assailed on the ground that the plaintiff was not in a fit state of mind at the time of executing the documents. Though the suit was originally filed by the

plaintiff, he was represented by his sole daughter as next friend, on the ground of his mental infirmity . Now, he is also died leaving behind the first defendant wife of the predeceased son and his wife viz., second defendant. The next friend is also sole daughter and one of the legal heirs of the deceased. It is to be noted that when the sole plaintiff died during pendency of the suit, right to sue survives to continue the suit. Therefore, the Court can implead the legal representative of the original plaintiff to be made as party and shall proceed with the suit. Merely because the applicant, legal representative of the plaintiff already appointed as next friend, it cannot be said that there was no right to sue survives in the suit. The very suit itself filed challenging the settlement deeds on the ground of mental infirmity by the settlor himself. Such view of the matter, merely because the legal representatives are at loggerheads and taking adverse stand against others in respect of the documents executed by the original plaintiff, it cannot be concluded that there was no right to sue survives.

7. Such view of the matter, this Court is of the view that being the daughter she has right to continue the suit since other legal representatives are already contesting the suit and supporting the documents which were sought to be cancelled by the original plaintiff. Accordingly, this application is allowed.

Defendants 1 and 2 are also to be recorded as legal representatives of the deceased plaintiff. The applicant, sole daughter of the deceased plaintiff who acted as next friend, is added as second plaintiff. Since all the legal representatives are taking different stand and hostile to others interest, it is for them to establish their right in the suit.

8. Registry is directed to carry out the amendment in the plaint. For filing amended plaint copy, post on 3.11.2020.

vaan

14.10.2020



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N.SATHISH KUMAR, J.

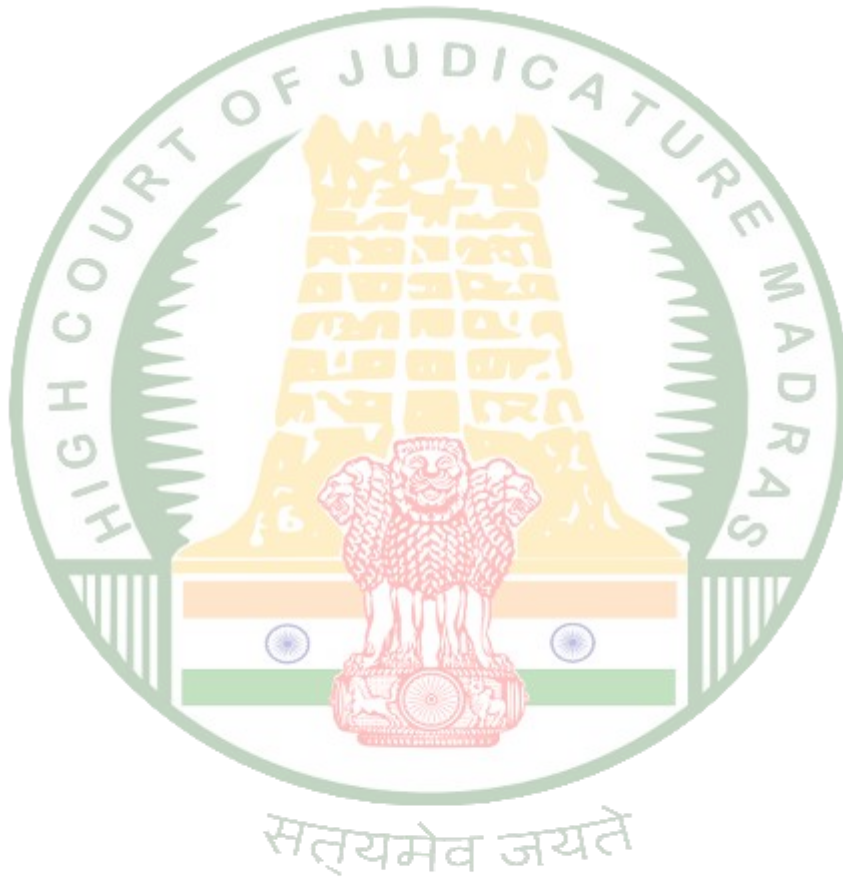
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