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C.R.P.(MD)Nos.2423 & 2424 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2020

CORAM:

THE HONOURABLE **MR. JUSTICE R. SUBRAMANIAN**

C.R.P. (MD)Nos.2423 and 2424 of 2013

and

M.P. (MD)No.1 of 2013

Lakshmi

... Petitioners / 3rd respondent /
Proposed 3rd respondent /
proposed 3rd defendant
in both C.R.ps.

Vs.

1.S.Balakrihsna Rao

2.V.Venkatraman

... Respondents 1 & 2 /
Petitioners / Petitioners/
Plaintiffs in both C.R.Ps.

3.Sri Sri Vyasaraaja Mutt,
No.1, Govindappa Street, Gandhi Bazaar,
Besavangudi, Bangalore 650 004.

S.Raju (Did)

... Respondents 3 & 4 /
Respondents 1 & 2 /
Respondents 1 and 2 /
Defendants 1 and 2 in both C.R.Ps

4.Raghavendran

5.Brinda

6.Gayathri

... Respondents 4 to 6/
Respondents 4 to 6 /
Proposed respondents 4 to 6 /
Proposed Defendants 4 to 6
in both C.R.Ps

COMMON PRAYER: These Petitions are filed under Article 227 of the Constitution of India, against the order dated 21.08.2013 made in I.A.Nos.13 of 2013 in I.A.280/2010 in O.S.No.30 of 2011 and I.A.No.14 of 2013 in O.S.No.30 of 2011 on the file of the Principal District Judge, Trichirappalli respectively.



For Petitioner in
both C.R.Ps

: Mr.P.Rajagopal

For Respondent in
both C.R.Ps

: No Appearance

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C O M M O N O R D E R

These Civil Revision Petitions arise out of the orders passed by the learned Principal District Judge, Trichirappalli impleading the petitioner and respondents 4 to 6 as defendants in the suit and respondents in I.A.No.280 of 2010.

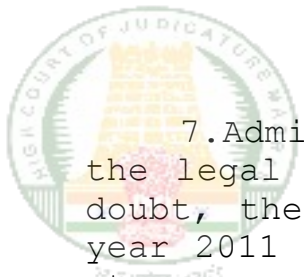
2.The suit in O.S.No.30 of 2011 was filed by the first and second respondents as representatives of the Community of worshipers of Sri Sri Vyasaraaja Mutt. The reliefs sought for in the suit are, for a direction to the second defendant to deliver possession of the property to the first defendant, for compensation and for costs.

3.The main thrust of the pleadings of the plaintiffs is that the sale by the Mutt in favour of the deceased second defendant on 29.04.1982 is invalid, as it is in breach of Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Pending suit, the plaintiffs filed I.A.Nos.13 and 14 of 2013 seeking to implead the petitioner herein and respondents 4 to 6, who are the legal heirs of the deceased second defendant. In the affidavit filed in support of the applications, it was stated that the plaintiffs, as worshipers, had filed the suit with available records and subsequently, they came to know that the second defendant in the suit had died even in the year 2000 leaving behind the proposed parties, as the legal representatives. Hence applications were filed under Order 1 Rule 10(2) of the Civil Procedure Code, seeking to implead the petitioners and her children as the defendants in the suit.

4.The proposed parties / petitioner and respondents 4 to 6, resisted the applications contending that since the very suit has been filed against a dead person, it cannot be prosecuted and therefore, they cannot be brought on record.

5.The learned Principal District Judge, Trichirappalli, by order, dated 21.08.2013, allowed the applications. Aggrieved, the petitioner has come up with these two Civil Revision Petitions.

6.I have heard Mr.P.Rajagopal, learned counsel appearing for the petitioner. The respondents are not appearing either in person or through counsel, duly instructed.



7. Admittedly, the petitioner and the respondents 4 to 6 are the legal heirs of the deceased second defendant in the suit. No doubt, the suit was filed as against the second defendant in the year 2011 though he had died in the year 2000. The plaintiffs are strangers to the property and they have filed the suit in the representative capacity for the worshipers. The petitioner and the respondents 4 to 6 are interested in the property on the strength of the sale deed executed in favour of the second defendant. Therefore, it cannot be said that they are not necessary parties to the suit. Even in cases, where the suit is filed against a dead person as the *bona fide* believe that he is alive, bringing on record their legal representatives is not prohibited. In fact, the Hon'ble Supreme Court in **KAURPPASWAMY AND OTHERS v. C. RAMAMURTHY**, reported in **AIR 1993 SC 2324**, held that if it is shown that the suit is instituted against a dead person on the *bona fide* believe that he/she is alive, the legal representatives can be brought on record. Therefore, I do not see any error or material irregularity in the order of the learned Principal District Judge.

8. Mr. P. Rajagopal, learned counsel appearing for the petitioner would, however, contend that in view of Section 21 of the Limitation Act, he would be entitled to take a defence on the ground of limitation, as if the suit was instituted on the date when the interim applications were filed seeking impleadment. I find justification in the contention of the learned counsel. Since the suit itself was filed against a dead person impleading of the petitioner and the respondents 4 to 6, cannot relate back to the date of the suit. Therefore, the suit in respect of the petitioner and the respondents 4 to 6 who have been impleaded as defendants 3 to 6 in the suit will be deemed to have been instituted on the date when the Interlocutory Applications seeking their impleading in I.A.Nos.13 and 14 of 2013 were filed.

9. With these observations, these Civil Revision Petitions are dismissed. Considering the fact that the suit is of the year 2011, the learned Principal District Judge, Trichirappalli, is directed to dispose of the suit as early as possible at any rate within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

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/ /2020

Sub Assistant Registrar(CS)



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To

The Principal District Judge, Trichirappalli.

WEB COPY +1 CC to M/s.R.DEVARAJ, Advocate (SR-4051[F] dated 31/01/2020)

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and

M.P. (MD)No.1 of 2013

30.01.2020

BS (CO)

TR(17.02.2020) 4P 3C