

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 18.12.2020****CORAM :****THE HONOURABLE MRS.JUSTICE S.ANANTHI****C.R.P. (MD) No. 2435 of 2015 (NPD)**

WEB COPY

1. Guruvammal ...Petitioner/Petitioner/3rd defendant
2. Vijayalakshmi
3. Mareeswari
4. Karuppasamy
5. Nagraj
6. Mareeswaran ... Petitioners 2 to 6/
Petitioners/Proposed
Defendants-4 to 8
vs.

1. Krishnammal
2. Oorathaammal
3. M. Rajeswari
4. S. Kaliammal
5. M. Veluchamy
6. P. Banumathi
7. Perumalsamy
8. M. Kathirvel
9. M. Srinivasan ...Respondents/Respondents/
Plaintiff Nos.2 to 10

PRAYER : Petition filed under Section 115 of Civil Procedure Code, against the Fair and Decreetal Order passed in I.A. No. 689 of 2013 in O.S. No. 80 of 2005 on the file of the learned District Munsif, Sivakasi, dated 13.04.2015.

For Petitioners : Mr. M. Ashok Kumar

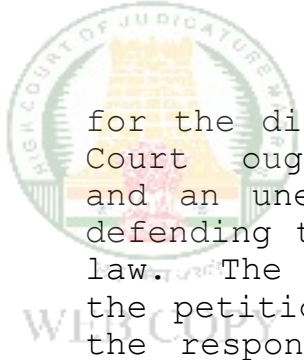
For Respondents : Mr. V. Srinivasan

ORDER

This petition has been filed against the Fair and Decreetal Order passed in I.A. No. 689 of 2013 in O.S. No. 80 of 2005 on the file of the learned District Munsif, Sivakasi, dated 13.04.2015.

2. The respondents herein have filed a suit in O.S. No. 80 of 2005 for declaration and for permanent injunction. The first revision petitioner herein has filed a petition in I.A. No. 689 of 2013 in O.S. No. 80 of 2005 on the file of the learned District Munsif, Sivakasi, under Order 22 Rule 3 and 151 of C.P.C to implead the legal heirs as Defendant Nos. 4 to 8 and the same was dismissed on 13.04.2015 by the learned District Munsif, Sivakasi. Against the said order, the present Civil Revision Petition has been filed.

3. The grounds raised by the civil revision petitioner is that the trial Court ought to have allowed the petition since no prejudice will be caused to the respondents as they will have every opportunity to cross examine the petitioner and put forth his case



for the dispose of the case in their favour on merits. The trial Court ought to have seen that the petitioner is a senior citizen and an uneducated lady and only if a chance is being given for defending the suit the real truth will come out before the Court of law. The trial Court ought to have condoned the delay by putting the petitioner on terms and there will be no loss and hardship to the respondents. Therefore, prayed to set aside the Fair and Decreeal Order passed in I.A. No. 689 of 2013 in O.S. No. 80 of 2005 on the file of the learned District Munsif, Sivakasi, dated 13.04.2015.

4. The learned counsel appearing for the respondents herein reiterated the contentions set out in the counter affidavit filed in I.A. No. 689 of 2013 in O.S. No. 80 of 2015 before the Court below.

5. Considering the facts of the case, the respondents in their counter did not deny that D-4 to D-8 are not the legal heirs of the D-2. The death certificate and legal heir certificates also filed. There is no doubt that there is delay to implead the legal heirs. On the date of death of D-1 & D-2 the suit was not on file. It was dismissed by default and restored on file only on 20.01.2011. There is no documents available in the revision whether notice was served to D-1 to D-3 in the restoration petition. The suit was filed in the year 2005. Therefore, without going into the question of delay, this Court is inclined to allow the legal heirs petition since the legal heirs are necessary for adjudication of suit and also Section 5 and Order 9 Rule 13 petition.

6. In the result, the Civil Revision Petition is allowed. The learned District Munsif, Sivakasi is directed to dispose of the petition filed under Section 5 and Order 9, Rule 13 Petition, as expeditiously as possible, after impleading the legal heirs of the second defendant.

Sd/-

Assistant Registrar (P&A)

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/ /2020

Sub Assistant Registrar(CS)

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To

1. The District Munsif, Sivakasi.

2. The Section Officer,

V.R.Section,

Madurai Bench of Madras High Court,

Madurai.(2C)

C.R.P. (MD) No. 2435 of 2015 (NPD)

18.12.2020