



C.R.P.(PD).No.216 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.216 of 2020

and

C.M.P.No.1185 of 2020

V.Vijaya (Deceased)

1.P.Viswanathan

2.V.Rajasekaran

.. Petitioners

Vs.

A/m.Marundeeswarar Thirukoil,
Rep. by its Executive Officer,
Thiruvanmiyur, Chennai – 600 041.

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 19.11.2019 passed in I.A.No.1 of 2019 in O.S.No.2520 of 2017 by the XVII Assistant City Civil Court, Chennai and reject the plaint.

For Petitioners : Mr.L.Om Magesh

For Respondent : Mr.Wilson Topaz
for Mr.A.K.Sriram

ORDER



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Challenge in this Revision is to the order of the trial Court, dismissing the application filed by the defendants under Order VII Rule 11 of the Code of Civil Procedure in I.A.No.1 of 2019.

2. The suit is one for permanent injunction restraining the defendants from putting up any construction in the schedule mentioned property. The suit was originally filed against one Vijaya w/o. Viswanathan. After institution of the suit, the plaintiff came to know that the sole defendant is no more and the petitioners herein, her husband and son were impleaded as her legal representatives.

3. Upon impleading, they came up with the application under Order VII Rule 11 of the Code of Civil Procedure contending that the suit was filed against Vijaya, the defendant in the suit, who died on 25.10.2015 and the suit filed as against the dead person is a nullity and the same cannot be revived by impleading her legal representatives.



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4. This very question as to whether legal representatives could be brought on record in a suit filed against a dead person was considered by the Hon'ble Supreme Court in *Karuppaswamy Vs. Ramamurthy* reported in *AIR 1993 SC 2324*, wherein, the Hon'ble Supreme Court had held that if the suit is filed against a dead person upon a *bona fide* belief that he or she is alive, the same can be continued against the legal representatives.

5. The trial Court has rightly rejected the objection and dismissed the application under Order VII Rule 11 of the Code of Civil Procedure. I do not see any ground to interfere with the said order of the trial Court. The Revision therefore fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

15.12.2021

dsa
Internet : Yes
Index : No
Speaking order

R.SUBRAMANIAN, J.



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To
The XVII Assistant City Civil Court, Chennai

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