

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2021

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P. (NPD) .No.2998 of 2015
and
MP.No.1 of 2015

1.Adishesan
2.Arumugam

.. Petitioners/Respondent 2 & 3

Vs.

1.Kaladevi @ Kalaiarasi ...1st Respondent/Appellant
Ellappa Gounder (died)

2.Alamelu

3.Renuga

4.Seetha

.. Respondents 2 to 5/Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decreetal order dated 06.01.2015 passed in I.A.No.125 of 2014 in I.A.No31 of 2014 in A.S.No.22 of 2006 on the file of the learned Principal District Judge, Villupuram and allow the above Civil Revision Petition.

For Petitioners : Mr.V.V.Sairam

For Respondents : Ms.R.V.Rukmani

for Mr.P.B.Ramanujam for R1

R2 to R4 - Notice served-No Appearance

O R D E R

This Civil Revision Petition is directed as against the order and decreetal order dated 06.01.2015 passed in I.A.No.125 of 2014 in I.A.No31 of 2014 in A.S.No.22 of 2006 on the file of the learned Principal District Judge, Villupuram, thereby, allowing the Review Petition filed under Section 114 of CPC by the 1st respondent herein.

2. The 1st respondent is the plaintiff and the petitioners are the defendants 2 and 3 in the suit filed for partition. After contesting, the suit was dismissed. Aggrieved by the same, the 1st respondent herein preferred an appeal suit. While pending appeal suit, the respondent viz., Ellappa Gounder father of the petitioners herein died. Therefore, the 1st respondent herein filed a petition to implead his other legal

heirs viz., respondents 2 to 4 herein in the appeal suit, without filing the petition to set aside the abatement and condone the delay in filing the petition to set aside abatement in the appeal suit. The court below dismissed the petition on the ground that the 1st respondent failed to file the petitions to set aside the abatement and to condone the delay in filing the application to set aside the abatement.

3. Thereafter, the 1st respondent filed the review petition under Section 114 CPC r/w. Section 151 CPC citing the judgment of the Hon'ble Supreme Court of India in Mahabir Prasad Vs. Jage Ram and others reported in AIR 1971 SC 742, on the ground that when the other legal heirs of the deceased is already on record in the appeal suit, the appeal suit is not abated as against the deceased and as such no need to file a petition to set aside the abatement as against the deceased person, and also no need to file a condone delay petition in setting aside the abatement. The court below allowed the same and impleaded the respondents 2 to 4 herein as respondents in the appeal suit.

4. The learned counsel for the petitioners would submit that the Review Petition is not at all maintainable as against the dismissal order of the implead petition, since there was no apparent error in the order passed by the court below and as such the 1st respondent ought to have filed a Civil Revision Petition before this court. He further submitted that the Review Petition under Section 114 CPC has to be filed with grounds, whereas, the 1st respondent filed review petition by way of affidavit petition and it is not at all maintainable.

5. The learned counsel for the petitioners further submitted that the Review Petition has been filed only on the ground that they failed to cite the judgment reported in AIR 1971 SC 742 cited supra at the time of filing the petition to implead in the appeal suit. Therefore, that is not a ground to file a review and in support of his contention, he had also relied upon the judgment of the Hon'ble Supreme Court of India in Sri Dokka Samuel Vs. Dr. Jacob Lazarus Chelly reported in 1977 (4) SC 643, the relevant portion reads as follows:

"The omission to cite an authority of law is not a ground for reviewing the prior judgment saying that there is an error apparent on the face of the record, since the counsel has committed an error in not bringing to the notice of the Court the relevant precedents. "

6. Per contra, the learned counsel for the 1st respondent would submit that the respondents 2 to 4 are the

sisters of the 1st respondent herein and daughters of the 1st petitioner herein. The 1st respondent already filed a suit for partition as against her own grandfather and his sons viz., father, paternal uncle. While the said suit was dismissed, aggrieved by the same, the 1st respondent filed appeal suit. While pending appeal suit, the grandfather viz., Ellappa Gounder died. The 1st respondent categorically mentioned in the affidavit filed in support of the petition to implead the other legal heirs in the appeal suit that the petitioners are already on record, even then the other legal heirs of the deceased grandfather have to be impleaded as party. But, the court below did not consider the same and dismissed the petition only on the ground that the 1st respondent failed to file the petitions to set aside abatement and to condone the delay in filing the petition to set aside the abatement.

7. The learned counsel for the 1st respondent further submitted that the law is handmaid of justice, though the 1st respondent failed to file a petition in the form of grounds to review the order passed by the court below, the review under Section 114 of CPC is very much maintainable as against the order passed by the court below.

8. The 1st respondent filed appeal suit as against the dismissal of her suit for partition. While pending appeal suit, the 1st respondent viz., her grandfather died. Admittedly, the petitioners/ 2nd and 3rd respondents in the appeal suit are none other than the sons of the deceased Ellappa Gounder. Therefore, they are already on record and even then the 1st respondent filed a petition to implead the other legal heirs of the deceased 1st respondent since they all are co-parceners in respect of the suit schedule property. Without considering the same, the court below dismissed the petition.

9. Thereafter, the 1st respondent filed review citing the judgment of the Hon'ble Supreme Court of India in Mahabir Prasad Vs. Jage Ram and others reported in AIR 1971 SC 742, wherein, it has been held as follows:-

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.

10. Citing the said judgment, the court below reviewed its own order and allowed the petitioner to implead the other legal heirs viz., the respondents 2 to 4 herein. On a perusal of the affidavit filed in support of the petition to implead the legal heirs of the deceased 1st respondent they mentioned as follows:-

அவருடைய வாரிசுகள் ஏற்கனவே மேல்முறையீட்டில் 2, 3 எதிர்மனுதாரர்களாக உள்ளார்கள். எனவே தற்போது இறந்த எல்லப்ப கவுண்டரின் மகன்களான அலமேலு, ரேணுகா, சீதா ஆகியவர்களை 4 முதல் 6 எதிர்மனுதாரர்களாக சேர்த்து மேல்முறையீட்டை நடத்த வேண்டியது அவசியமும், நியாயமும் ஆகிறது.

11. Even then, the court below failed to consider the same and dismissed the petition. Further, though the 1st respondent failed to file review in the form of grounds as rightly pointed out by the counsel for the respondent, the 1st respondent filed affidavit and petition to review the order. That apart, there is no prejudice that would be caused to the petitioner by impleading the respondents 2 to 4 herein. In view of the above discussion, I do not find any infirmity or illegality in the orders passed by the court below.

12. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

dsa

To

The Principal District Judge,
Villupuram.

Copy To:

The Section Officer, VR Section, High Court Madras.
+1cc to Mr.P.B.Ramanujam, Advocate, sr no.13065

C.R.P. (NPD) .No.2998 of 2015

GJ (CO)

RMP (16/04/2021)