

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).Nos.3262 and 3263 of 2015
and M.P.No.1 of 2015

Patchana Sadayachiammal

...Petitioner in
both the C.R.P's.

Vs

1.Chinnusami
2.Kaliannan
3.Solla Thangarasu
4.Solla Ponnusamy
5.Kodukka Nallammal

...Respondents in
both the C.R.P's.

Prayer in C.R.P.No.3262 of 2015: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order of the learned Additional District Munsif, Namakkal dated 14.10.2014 in I.A.No.831 of 2012 in I.A.No.174 of 2012 in O.S.No.238 of 2004.

Prayer in C.R.P.No.3263 of 2015: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order of the learned Additional District Munsif, Namakkal dated 14.10.2014 in I.A.No.174 of 2012 in O.S.No.238 of 2004.

In both the C.R.P's.

For Petitioner : Mr.T.M.Hariharan

For Respondents : Mr.C.Jagadish for R2
No appearance for R1, R3 to R5

COMMON ORDER

The Civil Revision Petitions have been filed as against the

(i) fair and decretal order of the learned Additional District Munsif, Namakkal dated 14.10.2014 in I.A.No.831 of 2012 in I.A.No.174 of 2012 in O.S.No.238 of 2004.

(ii) fair and decretal order of the learned Additional District Munsif, Namakkal dated 14.10.2014 in I.A.No.174 of 2012 in O.S.No.238 of 2004.

2.The petitioner in both the Civil Revision Petitions is the third party in the suit in O.S.No.238 of 2004, filed by the 1st and 2nd respondent herein, for the relief of partition.

3.After commencement of trial, the 5th defendant was examined as D.W.1. When the evidence of defendants side was closed, the respondents 1 and 2 filed a petition to recall the D.W.1 for further cross examination. When the said petition was pending, it was reported that the 5th defendant was died. Thereafter, the petitioner filed a petition to implead herself as the legal heir of the 5th defendant in I.A.No.583 of 2014 and the same was allowed on 14.10.2014 and consequently the petitioner herein has been impleaded as a 12th defendant in the suit. In the meanwhile, the respondents 1 and 2 herein filed a petition in I.A.No.174 of 2012 to implead the wife of the 5th defendant in the suit. When the said petition is pending, the 1st proposed defendant viz., the 6th defendant in the suit filed counter stating that she is the wife of the 5th defendant and they gave birth to one Paneer Selvam. Therefore, again the 1st and 2nd respondent herein filed another petition in I.A.No.831 of 2012 to implead the said Paneer Selvam as one of the proposed defendant in the suit. Both the petitions were allowed and they were impleaded as 6th and 7th defendants in the suit.

4.The learned counsel for the petitioner in both the Civil Revision Petitions would submit that she raised the categorical plea that the 6th

defendant had got customary divorce from the 5th deceased defendant and never gave birth to the 7th defendant in the suit, through the 5th deceased defendant. Further submitted that the 6th defendant, after divorce from the 5th deceased defendant got married with one Chellappan and gave birth to one Chelladurai and not gave birth to the 7th defendant in the suit. When the petitioner raised specific plea, it was not considered by the trial Court and the same was allowed and the 6th and 7th defendants were impleaded as a parties in the main suit. Further the trial Court has made an endorsement that determination of legal heirship of 6th and 7th defendants can be decided only at the time of trial by letting evidence. He also relied upon the provisions of Order 22 Rule 5 in respect of determination of question as to legal representative as follows:-

"Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court:

[PROVIDED that where such question arises before an Appellate Court, that court may, before determining the question, direct any subordinate court to try the question and to return the records together with

evidence, if any, recorded at such trial, its findings and reasons therefor; and the Appellate Court may take the same into consideration in determining the question.]"

Accordingly, when deciding the legal heirship, it shall be determined first by the Court. In this regard he also relied upon the case of ***Jaladi Suguna (deceased) through LR's Vs. Satya Sai Central Trust and Others*** reported in **2008 8 SCC 521**. Relevant paragraphs are extracted hereunder:-

"B.Civil Procedure Code, 1908 - Or.22 Rr.4, 5 r/w R.11 and S.96 - Postponement of determination of LR's - High Court deciding first appeal on merits prior to determining the LR's of the deceased respondent-plaintiff - held, court cannot postpone determination of LR's for being decided along with merits.

G.Civil Procedure Code, 1908 - Or.22 Rr. 5, 3 & 4 and S. 2(11) - Impleadment of LR's in suit/appeal - Purpose - Held is for the limited purpose of adjudication of case and not for the purpose of determination of proprietary rights - Proprietary rights to be determined by way of separate suit.

15.Filing an application to bring the legal

representatives on record, does not amount to bringing the legal representatives on record. When an LR application is filed, the court should consider it and decide whether the persons named therein as the legal representative, should be brought on record to represent the estate of the deceased. Until such decision by the court, the persons claiming to be the legal representatives have no right to represent the estate of the deceased, nor prosecute or defend the case. If there is a dispute as to who is the legal representative, a decision should be rendered on such dispute. Only when the question of legal representative is determined by the court and such legal representative is brought on record, can it be said that the estate of the deceased is represented. The determination as to who is the legal representative under Order 22 Rule 5 will of course be for the limited purpose of representation of the estate of the deceased, for adjudication of that case. Such determination for such limited purpose will not confer on the person held to be the legal representative, any right to the property which is the subject matter of the suit, vis-a-vis other rival claimants to the estate of the deceased."

In the above cited Judgment, the Hon'ble Supreme Court has held that the determination of as to who is the legal representative under Order 22 Rule 5

will of course be for the limited purpose of representation of the said deceased for adjudication of that case. Such determination for such limited purpose will not confer on the present legal heirs having any right to the property. It is the subject matter of the suit. Accordingly, it cannot be postponed for determination of legal heirship, it cannot be postponed to the trial of the suit. In the case on hand though the trial Court impleaded the 6th and 7th defendants as legal heirs of 5th deceased defendant. In respect of their legal heirship and their entitlement it has to be decided in the main suit. Therefore, the orders passed by the trial Court are perverse, illegal and also liable to be set aside.

5. Accordingly the orders passed by the learned Additional District Munsif, Namakkal in I.A.No.831 of 2012 in I.A.No.174 of 2012 in O.S.No.238 of 2004 dated 14.10.2014 and in I.A.No.174 of 2012 in O.S.No.238 of 2004 dated 14.10.2014 are set aside. Both the Civil Revision Petitions are allowed. Both the I.A.Nos.831 of 2012 and 174 of 2012 are remanded back to the trial Court for fresh consideration in complying the provisions under Order 22 Rule 5 of CPC. No costs. Consequently

connected miscellaneous petition is closed.

08.01.2021

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
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To
The Additional District Munsif, Namakkal.

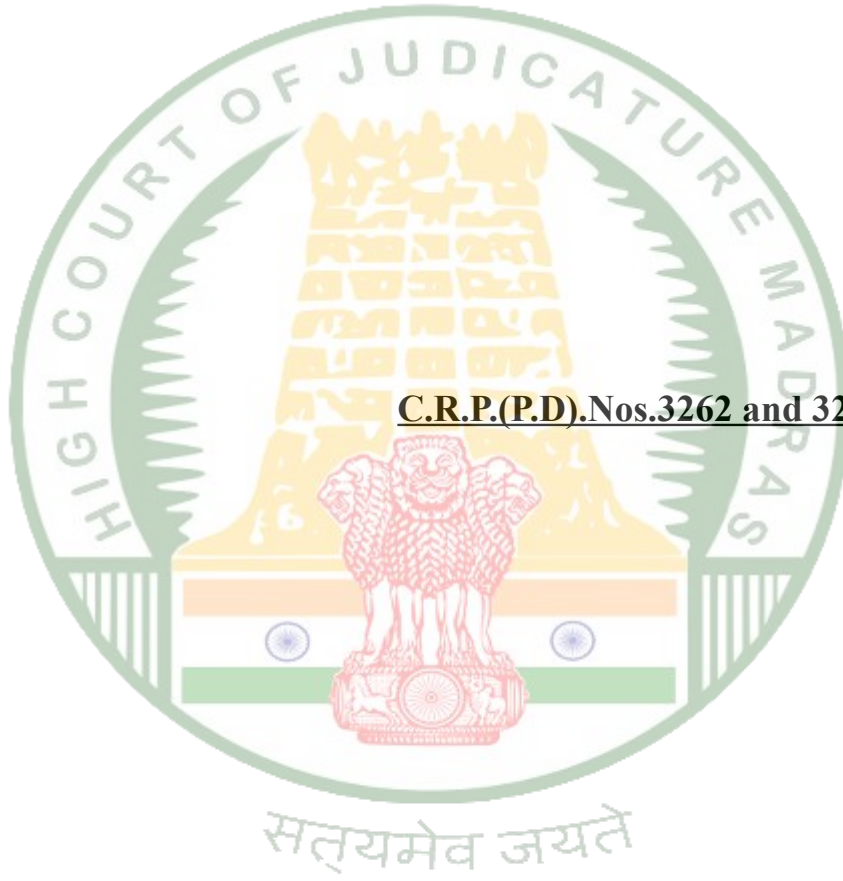


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