

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 07.04.2021

CORAM:

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

CRP.(NPD)No.3107 of 2013

and

M.P.No.1 of 2013

Devaraj

.. Petitioner/Petitioner/Petitioner/ Defendant

Vs.

P.K.Subramani (deceased)

..

1st respondent/1st plaintiff

1.Baby @ Amuthavalli

..

.. respondent/2nd respondent/2nd respondent
/ 2nd plaintiff

2.Dhamayanthi

..

.. respondent/3rd respondent/proposed

3rd respondent

PRAYER: This Civil Revision Petition is filed under Section 115 of C.P.C, against the fair order and decreetal order in I.A.No.641/2012 in I.A.No.114/2011 in O.S.No.179/2003, on the file of the Subordinate Court, Perundurai, Erode District dated 20.03.2013.

For Petitioner : Mr.V.Raghavachari

For Respondents : No Appearance.

ORDER

This Civil Revision Petition has been filed against the order dated 20.03.2013 on the file of the learned Sub Judge, Perundurai, Erode district, passed in I.A.No.641 of 2012 in I.A.No.114/2011 in O.S.No.179/2003.

2. The Civil Revision Petitioner is the petitioner in the interlocutory application and defendant in the suit. The 1st and 2nd respondents were the plaintiffs and the 3rd respondent is the proposed party who is sought to be impleaded as a party to I.A.No.114/2011.

3. The submission of the learned counsel for the civil revision petitioner heard. Despite the notices were served on 2nd and 3rd respondents, they did not appear and make their submissions.

4. It is submitted by the learned counsel for the revision petitioner that the suit in O.S.No.179/2003 was filed by the deceased plaintiff represented through his wife. (who is sought to be impleaded as the LR vide this petition). His daughter was the 2nd respondent/2nd plaintiff and the suit had been decreed *ex-parte*. This civil revision petitioner has filed a petition in I.A.No.114/2011 to condone the delay in filing the petition to set-aside the *ex-parte* decree passed in the suit. It is further submitted

that during the pendency of the said petition the 1st respondent/1st plaintiff died and hence the proposed party/3rd respondent , who is the wife of the deceased 1st respondent/1st plaintiff should be impleaded as a party. Hence this petition was filed to implead her as a party to the proceedings in I.A.No.114/2011. and the same was dismissed.

5. Learned counsel for the revision petitioner would further submit that the petition in I.A.No.640/2012 has been filed just in order to get away the technical difficulty and to get on with the enquiry of the main petition and that the learned Trial Judge without properly appreciating the matter in issue has complicated himself and dismissed the petition.

6. On perusal of the order of the learned Subordinate Judge dated 20.03.2013 passed in I.A.No.641/2012, it is seen that the learned Judge has observed that the 1st respondent/1st plaintiff had died 8 years ago and the petitioner/defendant has purposefully suppressed the same and filed this L.R. application and held that this is not maintainable. The learned Trial Judge has also dealt with the merits of the petition filed in I.A.No.114/2011 and ultimately dismissed the petition.

7. Learned counsel for the Revision petitioner submitted that even if contention of the respondents is accepted that the deceased had died long ago, that will not render the

petition in I.A.No.114/2011 abated for the reason that one of the legal representatives of the deceased is available on record as the 2nd respondent/2nd plaintiff.

8. In fact, the deceased 1st respondent/1st plaintiff has been represented by his wife one Dhamayanthi who has been sought to be impleaded as a party to I.A.No.114/2011. The proposed party being the wife who had represented the deceased in the suit and she is available on record in her representative capacity, a simple amendment petition to implead her in her individual capacity also due to the death of the first plaintiff, could have served the purpose. If the legal representatives of the deceased are not allowed to be impleaded it would result in multiplicity of proceedings and unnecessary complications.

9. The learned Trial Judge has raised a suspicion as to the actual date of death of the 1st respondent/ 1st plaintiff. Whatever may be the case, the petition in I.A.No.114/2011 would not have got abated, since his daughter is a party and who is also the legal representative of the deceased 1st respondent/ 1st plaintiff. Further the proposed party who is sought to be impleaded now, has represented her deceased husband in the suit by alleging that he was mentally unsound. Whatever may be the respective submissions of the parties the merits of such submissions could have been tested by the learned Trial Judge while dealing with the petition to set aside the ex-parte decree. Unless this petition is allowed and the impediment for further progress is cleared, the

other petition in I.A.No.114/2011 will not see the light of the day. the interest of the justice, I feel that this petition has to be allowed.

In the result, **this Civil Revision Petition is allowed** and the order of the Sub Judge, Perundurai passed in I.A.No.641 of 2012 is set aside. Considering the long pendency of the matter, learned trial Judge is directed to dispose of I.A.No.114/2011 at the earliest. Consequently, connected miscellaneous petitions in M.P. No.1/2013 is also closed. No costs.

07.04.2021

Index : Yes/No
Speaking/ Non-Speaking
Internet: Yes/No

jrs

सत्यमेव जयते

WEB COPY

R.N.MANJULA, J.

jrs

To

1. The Subordinate Court, Perundurai, Erode District.
2. The Section Officer, V.R.Section, High Court, Madras.



CRP.No.3107 of 2013

WEB COPY

07.04.2021