

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.09.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (PD) No.1141 of 2020
and C.M.P. No.6152 of 2020

K.Gopalakrishnan

... Petitioner

Vs.

1. P. Muthuvaduganathan @ Muthukumar

P. Gurukrishnan (deceased)

2. Krishnaveni

3. R.Palaniswamy

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and decretal order dated 22.11.2019 made in I.A.No.870 of 2016 in O.S. No. 256 of 2008 on the file of Principal Subordinate Judge, Coimbatore.

For Petitioner : Mr. M. Ashwin kumar

For Respondents : No appearance

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ORDER

This petition is filed challenging the order passed the learned Principal Subordinate Judge, Coimbatore, in I.A.No.870 of 2016 in O.S. No. 256 of 2008.

2. The short point that arises for the consideration before this Court from the submissions made by the learned counsel for the petitioner is that, whether allowing I.A.No.870 of 2016, without sending notice to the proposed parties, is in accordance with law. The learned counsel for the petitioner submitted that the second plaintiff passed away while taking bath at Marina Sea Shore and his body could not be traced. Presuming that he is dead, his legal heirs were sought to be impleaded as third and fourth plaintiffs in the suit. It is further submitted that the petitioner learnt that the proposed parties do not want to get impleaded themselves in the suit and no vakalat has been filed on behalf of the proposed parties in the impleading petition.

3. Despite notice being served on the respondents on 13.05.2020, no one appeared before this Court. The learned counsel appearing for the respondents before the lower Court was also informed. However, considering the short point involved in this petition, this Court proceeds to dispose this matter.

4. When the matter was taken up for hearing on 26.08.2021, this Court directed the Registry to call for the records in I.A. No.870 of 2016 in O.S. No.256 of 2008 and to verify whether any vakalat has been filed on behalf of the proposed parties. Accordingly, records in I.A. No.870 of 2016, were received. It shows that there was no notice sent to the proposed parties. Notice of hearing was only issued to the contesting respondents / defendants.

Contesting defendants were given notice and after filing counter by them, the impleading petition was disposed. It is a fundamental principle and it is imperative that when a new party is impleaded at the instance of one or other parties to the suit, notice must be sent to the proposed parties. Unfortunately, in this case, no notice was sent to the proposed parties. Allowing the impleading application without ordering notice to the proposed parties is defective and not correct.

5. For the aforesaid reasons, the order passed by the learned Principal Sub Judge, Coimbatore, in I.A. No.870 of 2016 in O.S. No. 256 of 2008, is hereby set aside and I.A.No.870 of 2016 is remitted back to the file of learned Principal Sub-Judge, Coimbatore, for issuing notice to the proposed parties. After ensuring proper service of notice to all the parties, the learned Judge is directed to dispose the petition on merits and in accordance with law. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes / No

Speaking order / Non speaking order

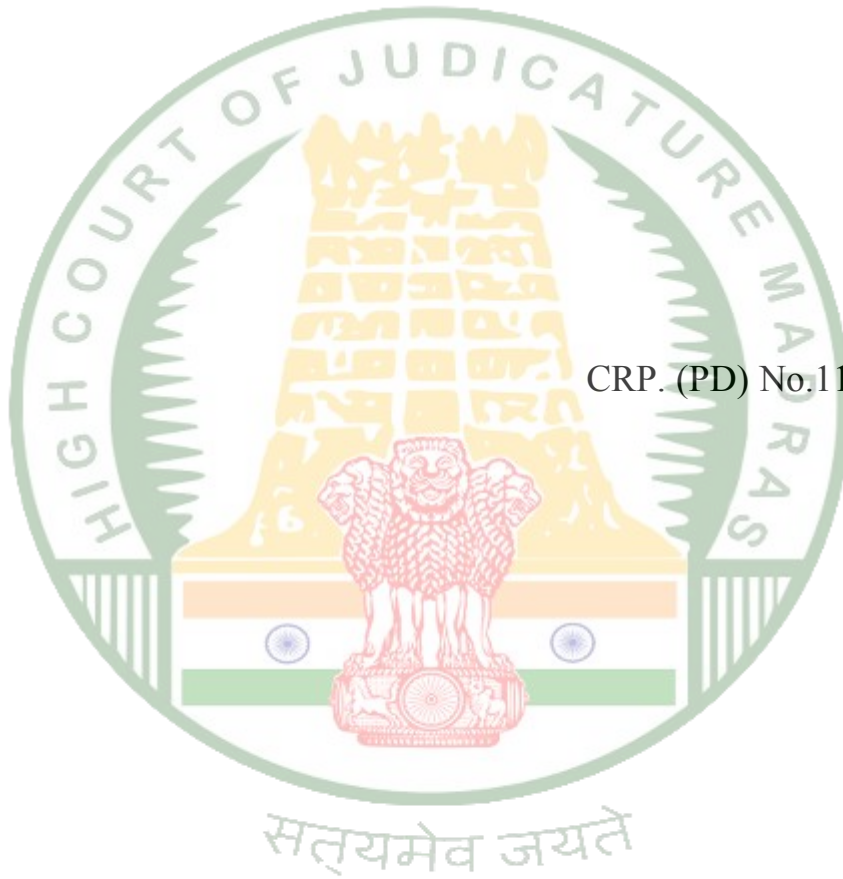
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G.CHANDRASEKHARAN. J.,

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Copy To:

The Principal Sub-Judge, Coimbatore.



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