

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 17.09.2021

Coram::

THE HONOURABLE Mr.JUSTICE G.CHANDRASEKHARAN

C.R.P(PD).No.1480 of 2021
and
C.M.P.No.11634 of 2021

1.Kotti
2.Kottirajan
3.Ravi
4.Sekar
5.Vivekanandan
6.Kottiammal

... Petitioners

/versus/

Vimala (died)
Palani

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying by setting aside the fair and decreetal order dated 03.03.2021 in I.A.No.3 of 2020 in O.S.No.297 of 2014 on the file of the District Munsif Court, Thiruvottiyur.

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For Petitioners

: Mr. K.Prabhakaran

For Respondents

: Mr.B.Karthikeyan

ORDER

(The case has been heard through video conferencing)

This petition is filed challenging the order passed in I.A.No.3 of 2020 in O.S.No.219 of 2014 on the file of the District Munsif Court, Thiruvottiyur on 03.03.2021.

2. The interlocutory application was filed under Order 22 Rule IV of C.P.C., to bring on record the 2nd respondent/defendant the legal representative of the deceased 1st respondent/defendant as the 2nd defendant in the suit.

3. It is seen from the affidavit filed in support of this petition and also the submissions made by the learned counsel for the petitioner that the suit in O.S.No.219 of 2014 was filed for eviction of the tenant Vimala from the suit property. It is also submitted that Vimala has filed a petition under Section 9 of the C.T.P.Act, when the proceedings were pending, Vimala died on 29.06.2020. Therefore, the aforesaid petition was filed for impleading his brother Palani as 2nd defendant in the suit. However, the application was dismissed. Against the said dismissal, the present civil revision petition is preferred.

4. The learned counsel for the respondent submitted that Vimala has a son namely Mani. The proposed 2nd defendant Palani is not a direct legal heir of the deceased Vimala. He is only a class 2 heir. Therefore, the learned Judge dismissed the petition. He further submitted that when the direct class 1 legal heir is available, impleading the class 2 legal heir of the deceased Vimala cannot be permitted and therefore, the learned Judge dismissed the petition. The petition was dismissed mainly on the basis of the counter filed by the proposed 2nd respondent. The proposed 2nd defendant Palalni has specifically pleaded that he is not a direct legal heir of the deceased Vimala.

5. Heard the rival submissions and perused the records.

6. Taking into consideration of the submissions made by the learned counsel for the proposed 2nd respondent Palani that he is not the legal heir of the deceased Vimala and she has her children, this Court directed the 2nd respondent in this case namely Palani to furnish details of legal heirs of the Vimala. In accordance with the direction, a memo was filed stating that the deceased Vimala's legal heir is her son Mr.Mani S/o.Mr.Elumalai, Kollathoppu village, Kavaraipettai-601 206. Of course, no legal heir certificate is produced before this Court. However, taking into

consideration, the memo filed by Mr.Palani, who is the brother of the deceased Vimala, this Court finds that her son Mr.Mani is alive the impleadment of Palani, brother of the deceased Vimala is not correct.

7. Therefore, this Court confirms the order passed by the learned Judge and directs the petitioner to implead Mr.Mani, the legal heir of the deceased Vimala as class 1 heir. The period spent in prosecuting the civil revision petition is excluded for considering the period of limitation.

8. Accordingly, the civil revision petition is disposed of. Consequently, connected civil miscellaneous petition is also closed. No costs.

सत्यमेव जयते

17.09.2021

Index :Yes/No
Speaking order/Non-speaking order.
rpl

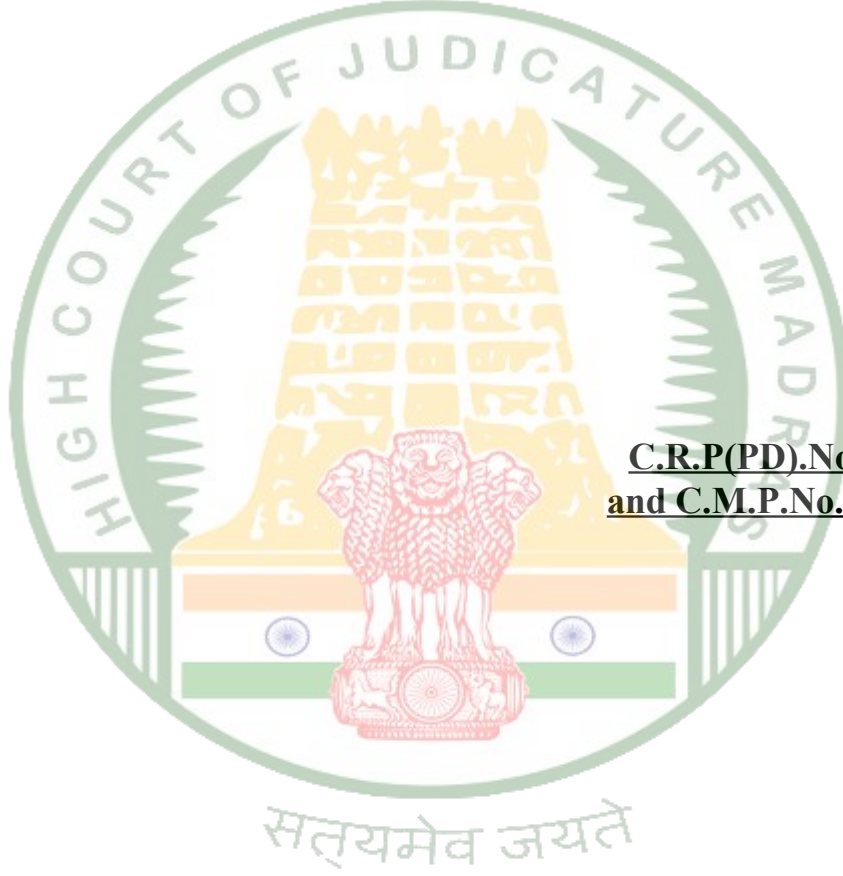
To:-

The District Munsif Court, Thiruvottiur.

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G.CHANDRASEKHARAN,J.

rpl



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