

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (PD) Nos.1907 and 1908 of 2021
and C.M.P.Nos.14812 & 14814 of 2021

- 1.Revathy
- 2.Ravichandran

Gandhimathi (died)

- 3.Hemavathi
- 4.Kumaresan
- 5.Jeevamani
- 6.Jayamani
- 7.Vasanthakumari
- 8.K.Munirathinam

Petitioners /
Defendants
[in both CRPS]

Vasuki Ammal (died)

- 1.Sivakumar
- 2.Sasikala
- 3.Sarada

Neelavathi (died)
Suseela (died)
Chandrammal (died)
Dhanalakshmi (died)

- 4.Vasuki
- Krishnaveni (died)

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Kamakshi Ammal (died)

5.Balasubramaniam

C.T.Jayakumar (died)

6. Sumathi

7.Kalpana

...

Respondents /
Plaintiffs
[in both CRPS]

COMMON PRAYER: Civil Revision Petitions have been filed under Article 227 of the Constitution of India, to set aside the Fair and decreetal orders passed by the learned Subordinate Judge, Tiruvallur made in I.A.No.6 of 2021 and I.A.No. 7 of 2021 respectively in A.S.No.17 of 2013 dated 08.03.2021 and thereby allow these Civil Revision Petitions.

For Petitioners : Mr.A.R.Suresh
[in both CRPS]

For Respondents : Mr.B.Deepak Narayanan
[in both CRPS]

COMMON ORDER

C.R.P.No.1907 of 2021 is filed challenging the order passed by the learned Subordinate Judge, Tiruvallur, in I.A.No.6 of 2021 in A.S.No.17 of 2013 and C.R.P.No.1908 of 2021 is filed challenging the order passed by the learned Subordinate Judge, Tiruvallur, in I.A.No.7 of 2021 in A.S.No.17 of 2013.

2. I.A.No.6 of 2021 was filed seeking direction to the respondents / plaintiffs to furnish the date of death of the respondents 6 and 13 with particulars of their legal representatives to enable the petitioners to take steps for bringing the legal representatives on record. I.A.No.7 of 2021 was filed for exempting the petitioners from substituting the legal representatives of 7th respondent.

3. The case of the petitioners as seen from the affidavit filed in support of this petition, is that, they filed this I.A.No.6 of 2021, stating that they are not able to collect the particulars of the legal representatives of the deceased respondents 6 and 13, namely, Suseela and Jayakumar. It is the responsibility of the counsel appearing for them to communicate the Court about the death of the parties. Therefore, this petition. In I.A.No.7 of 2021, 7th respondent Chandrammal was set *ex parte* on 10.09.2013. It is informed that she died on 15.02.2018. She died after she was set *ex parte*. Therefore, the petitioners should be exempted from substituting the legal representatives of 7th respondent as per Order 22 Rule 4(4) of C.P.C. Both the petitions were contested by the respondents. The learned Subordinate Judge, on considering the rival submissions, dismissed both the petitions.

Against the dismissal of I.A.Nos.6 of 2021 and 7 of 2021, these Civil Revision Petitions are preferred.

4. The learned counsel for the petitioners reiterated the submissions made in the affidavits filed along with I.A.Nos.6 of 2021 and 7 of 2021 and submitted that, unless the respondents give details of the date of death of the deceased respondents 6 and 13 with particulars of their legal representatives, it is not possible for the petitioners to take steps to implead the legal representatives of the deceased respondents 6 and 13. However, without considering this aspect and also the duty casts on the counsel under Order 22 Rule 10(A) r/w Section 151 of C.P.C., the learned Subordinate Judge dismissed I.A.No.6 of 2021. When 7th respondent was set *ex parte* in the suit and she died after she was set *ex parte*, it is not necessary to implead the legal representatives, the Court has powers to exempt the petitioners from substituting the legal representatives of 7th respondent under Order 22 Rule 4(4) of C.P.C. This aspect has also not been considered by the learned Subordinate Judge and I.A.No.7 of 2021 was also dismissed.

5. The learned counsel for the petitioners also placed reliance on the judgment of this Court in **KRISHNAVENI vs. RAMACHANDRA NAIDU** reported in **1998 (I) CTC 423** for the proposition that *"the Court has power to exempt the plaintiff from the necessity to substitute the legal representative of any such defendant who has been declared ex parte or who has failed to file his written statement or who having filed it, has failed to appear and contest at the hearing."*

6. The learned counsel for the respondents submitted that, the learned counsels for the respondents 2 and 3 were not the counsels appeared for the deceased respondents 6 and 13 and therefore, they cannot be compelled to produce the particulars of the legal representatives of the deceased respondents 6 and 13. It is also submitted by him that, the power of the Court under Order 22 Rule 4(4) of C.P.C. is not a mandatory power. It is not that the plaintiffs would be exempted from necessity of substituting the legal representatives of any such defendant who has failed to file written statement or who having filed it, has failed to appear and contest the suit at the hearing. It is further submitted that, in a suit for partition, the plaintiffs

are defendants and the defendants are plaintiffs, therefore, the legal representatives of the deceased 7th respondent has to be necessarily impleaded.

7. Considered the rival submissions and pursued the records.

8. The reading of Order 22 Rule 10(A) shows that *"whenever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party."* In the case on hand, there are 2 aspects, one is that, the learned counsel appearing for the respondents 2 and 3 were not the counsel appeared for the respondents 6 and 13 and therefore, the learned counsel for the respondents 6 and 13 cannot be expected to inform the Court about the death of the respondents 6 and 13.

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9. Another aspect is that, this Rule requires the pleader only to inform the Court about the death of the party. It is not the duty on the counsel to inform the Court about the legal representatives of the deceased person. Obviously, the counsel may not be knowing about the details of the legal representatives. The learned Subordinate Judge, has considered these aspects in his order and rightly dismissed the petition. This Court finds no reason to interfere with the order of the learned Subordinate Judge in dismissing I.A.No.6 of 2021.

10. So far as I.A.No.7 of 2021 is concerned, the power to exempt the plaintiffs to substitute the legal representatives of the deceased defendant, who was set *ex parte* in the subsequent proceedings is dealt with under Order 22 Rule 4(4) of C.P.C. This provision reads that "*the Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement, or who, having filed it, has failed to appear and contest the suit at the hearing.*" It is not mandatory for the Court to exercise this power in every case. This is a suit for partition, as already said by the

learned counsel for the respondents that, the plaintiffs are defendants and defendants are plaintiffs. The rights of the parties and their entitlement to share in the property has to be necessarily considered. If the legal representatives of 7th respondent, is not impleaded, they may lose their share, if any, in the event of partition is ordered and share is allotted. Therefore, in the peculiar facts and circumstances of the case, the learned Subordinate Judge found that this power cannot be exercised in favour of the petitioners. Therefore, dismissed the petition. This Court fully agrees with the reasoning given by the learned Subordinate Judge, for dismissing this petition. This being the partition suit, the legal representatives of the deceased 7th respondent surely be impleaded.

11. In such view of the matter, this Court finds no reason to interfere with the orders dated 08.03.2021 passed by the learned Subordinate Judge, Tiruvallur in I.A.No.6 of 2021 and I.A.No.7 of 2021 respectively in A.S.No.17 of 2013 and the orders are confirmed.

12. Resultantly, these Civil Revision Petitions are dismissed.

Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

17.09.2021

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

psa / sri

To

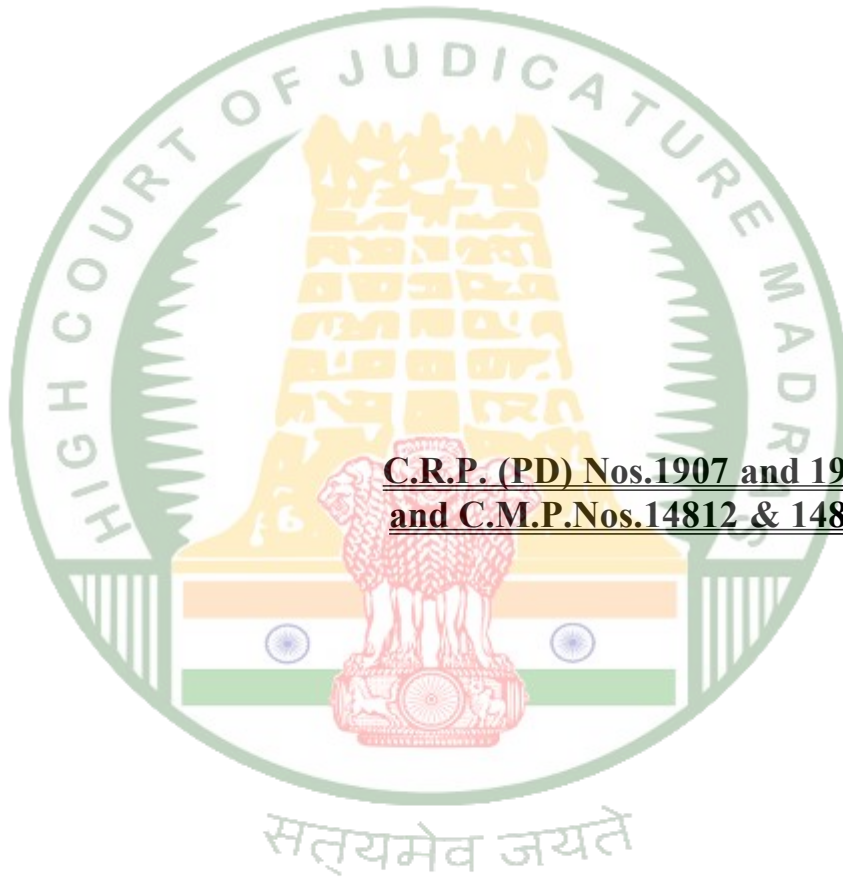
The Subordinate Judge,
Tiruvallur.



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G.CHANDRASEKHARAN, J.

psa / sri



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