



C.R.P.(PD).No.2794 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.2794 of 2021

and

C.M.P.No.20268 of 2021

Palanisamy

.. Petitioner

Vs.

1.Bannari

2.Rangasamy

3.Avinashi Gonder

4.The District Collector,
Collectorate Office,
Tiruppur, Tiruppur District.

5.The Tahsildar,
Avinashi Taluk,
Tiruppur District.

6.Marappan

7.Palanisamy

.. Respondents

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PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 06.09.2021 made in I.A.No.1691 of 2018 in O.S.No.298 of 2013 on the file of District Munsif Court, Avinashi and to allow the Civil Revision Petition.

For Petitioner : Mr.C.Prabakaran

ORDER

This Revision is against the order dismissing an application in I.A.No.1691 of 2018 filed by the petitioner herein seeking to implead the respondents 6 and 7 as parties to the suit for partition under Order I Rule 10(2) of the Code of Civil Procedure.

2. The respondents 6 and 7 are sought to be impleaded in the suit as the legal heirs of the deceased 3rd defendant. The 3rd defendant died on 08.12.2014 and the application for impleading, came to be filed in the year 2018. The same was resisted contending that the application under Order I Rule 10(2) of the Code of Civil Procedure is not maintainable and this application is filed only to get over the huge delay in bringing on record the



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legal representatives of the deceased 3rd defendant. The learned trial Judge accepted the defence and dismissed the application.

3. Mr.C.Prabakaran, learned counsel appearing for the petitioner would contend that this being a partition suit and the other defendants being alive, the legal representatives of the deceased can be impleaded in the suit under Order I Rule 10 (2) of the Code of Civil Procedure.

4. I am unable to sustain the submission of the counsel. Admittedly, the 3rd defendant died in 2014 and his legal representatives were not brought on record within time allowed under law. The suit as against the 3rd defendant stood abated upon expiry of 90 days from the date of his death. Without having the abatement set aside, impleading of his legal representatives cannot happen.

5. Hence, I am unable to fault the trial Court for dismissing the application. It is however open to the petitioner to file appropriate application under Order XXII of the Code of Civil Procedure, if he is so



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R.SUBRAMANIAN, J.

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advised. The pendency of the application under Order I Rule 10(2) of the Code of Civil Procedure would be taken into account by the learned trial Judge, when the petitioner seeks condonation of delay in seeking to set aside the abatement.

6. Accordingly, this Civil Revision Petition is **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

20.12.2021

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Index : No

Speaking order

To

The District Munsif, Avinashi.

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