



CRP (PD) No. 2745 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.12.2021**

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

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Haridass ... 2nd Respondent/2nd Defendant/Petitioner

Vs

1. Vasanthi ... Petitioner/Plaintiff/1st Respondent

Chokkalingam (Died)

2. Dhanasekar

3. Selvi

4. Chandralekha

5. Illayaraja

6. Selvaraj ... Respondents 3 to 7/Defendants 3 to 7/Respondents 2 to 6

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order of the Subordinate Judge's Court at Kallakurichi, dated 26.11.2019 in I.A.No. 116 of 2019 in O.S.No. 382 of 2017.

For Petitioner : Mr. P.Valliyappan

1/7



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ORDER

Challenge in this Revision is to the order of the trial Court allowing an application in I.A.No. 116 of 2019 seeking an amendment of the plaint consequent upon the death of the 1st and 8th defendants in O.S.No. 382 of 2017.

2. The suit in O.S.No. 382 of 2017 was filed by the first respondent herein seeking for partition and separate possession of the plaintiff's 1/6th share. The plaintiff claims the said share as the daughter of one Chokkalingam, who has arrayed as the 1st defendant in the suit. The defendants 2, 3, 4 and 5 were shown to be the sons of the said Chokkalingam. The 6th defendant Illayaraja, was shown to be sone of Mannankatti; the 7th defendant is one Selvaraj, son of Seranga Gounder. One Marimuthu, son of Poomalai was cited as the 8th defendant.



3. Claiming that the 1st and 8th defendants died pending suit and the first defendant had left behind the plaintiff and the defendants 2, 3, 4 and 5 as his legal heirs, the plaintiff filed an application seeking amendment of the plaint to incorporate the word 'deceased' after the description of the 1st and 8th defendants. In so far as the first defendant is concerned the plaintiff, in the affidavit filed in support of the said application, had averred that the first defendant had died leaving behind the plaintiff herself and the defendants 2 to 6. As regards the 8th defendant, it is stated that the 8th defendant was impleaded on an apprehension that he is attempting to purchase the property and now that the plaintiff learns that there is no sale in favour of the 8th defendant and the legal heirs of the 8th defendant were not required to be made parties to the suit. In effect, the plaintiff has given up the reliefs against the 8th defendant. This application was opposed contending that the application for amendment is not maintainable and that, it is only the plaintiff and the defendants 2, 3, 4 and 5, who are the legal heirs of the first defendant and not the 6th defendant.



4. The Trial Court however, considering the nature of the relief sought for and the prayer in the application which seeks to only add the word 'deceased' after the name of the 1st and 8th defendants in the short and long cause titles in the plaint allowed the application overruling the objection. Hence, this Revision.

5. Mr. P.Valliyappan, learned counsel for the petitioner would contend that the application under Order VI Rule 17 itself could not be the proper remedy in terms of the Judgment of the Hon'ble Supreme Court in ***AIR 1971 SC 742 [Mahabir Prasad Vs. Jage Ram and Ors.]***. A memo would suffice since there is no question of abatement of the suit as other legal heirs are already on record.

6. No doubt, the Hon'ble Supreme Court had held that there would not be any abatement if legal heirs of the parties already on record in another capacity in the same suit of proceedings. But at the same time, to bring it to the notice of the Court that a party has died an amendment has to be carried out in the plaint. The death of the party has to be recorded in



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some form in the plaint, which in my opinion can be done only by way of amendment and not otherwise.

7. The present application can be treated as a consequence of the death of a party which does not result in an abatement. If death of a party results in abatement, applications would be filed under Order 22 which will result in automatic incorporation of the details in the plaint. Once it is held that no application under Order 22 is necessary in view of the fact that there is no abatement, then an application for amendment would be the only recourse to record the factum of death in the pleadings. If such factum of death is not recorded in the pleadings, it may go unnoticed at a later point of time.

8. I am therefore of the opinion that no interference is called for with the order of the learned Special Judge, Kallakurichi except to state that the very statement in the affidavit that the 6th defendant is also the legal heirs of the first defendant will not confer any right on the 6th defendant over the estate of the first defendant.



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9. In view of the above, this Civil Revision Petition is disposed of.

No costs. Consequently, connected Miscellaneous Petition is closed. No costs.

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vs

Index: Yes/No

Speaking order / Non speaking order

To:

1. Sub Court, Kallakurichi
2. The Section Officer,
VR Section,
Madras High Court, Chennai.



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R.SUBRAMANIAN, J.

Vsg

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