

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No. 3327 of 2017

and

CMP.No.15499 of 2017

1. K.Chennaippan
2. K.Krishnamurthy

... Petitioners

Vs.

Mayangathal (Died)
1. A.Balamani
2. P.Muthulakshmi

... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 06.06.2017 passed in I.A.No.225 of 2017 in O.S.No.4 of 2008 on the file of learned Principal Subordinate Judge, Tiruppur.

For Petitioners : Mr.K.Myilsamy

For Respondents : Mr.M.Vijaragavan for
: Mr.G.Ponnambala Thiagarajan

ORDER

This Civil Revision Petition is directed as against the order passed in I.A.No.68 of 2013 in I.A.No.225 of 2017 in O.S.No.4 of 2008 dated 06.06.2017 on the file of the learned Principal Subordinate Judge, Tiruppur, thereby, allowing the petition to dispense with the legal heirs of the deceased /defendants 2 and 3 brining on record in the suit.

2. The petitioners are the first and fourth defendants in the suit filed by the respondents herein for partition. Originally, the suit was filed as against the four defendants, in which the second and third defendants were set ex-parte. The suit is proceeded as against the other defendants viz., the petitioners herein. While the suit is pending, the respondents filed a petition to dispense them from bringing on record the legal heirs of the deceased/defendants 2 and 3 in the suit.

3. The learned counsel for the petitioners submitted that the Sub-rule (4) of Rule 4 of Order 22 of the Civil Procedure Code is only “enabling provision”, which permits the Courts to exempt the plaintiffs from necessity of substituting the Legal Representatives of such defendant who has failed to

file a written statement or who has not appeared to contest the suit. In this regard, he relied upon the judgement reported in AIR 2005 Rajasthan 6 (**Dharam Singh -vs- Mukhtia Singh**), wherein the High Court of Rajasthan held as follows:-

“12. The approach of the first appellate Court in holding that even when the application filed by Santa Singh in his lifetime for setting aside ex-parte order was pending in the suit, still the LRs, who were not brought on record by the plaintiffs should also have moved an application for setting aside the same ex-parte order, which was passed against Santa Singh and was under challenge by the application of Santa Singh himself, is absolutely perverse, illegal and contrary to the provisions of law. The sub-rule (4) of Rule 4 of the Order 22, CPC is only enabling the provision, which permits the Courts to exempt the plaintiffs from necessity of substituting the LRs of such defendant who has failed to file a written statement or who has not appeared to contest the suit. The sub-rule (4) of Rule 4 of Order 22, CPC nowhere permits the parties themselves to exercise the discretion of not impleading the LRs of any of the defendant, who has not filed written statement or who has not appeared to contest the suit. In

this case admittedly, the plaintiffs themselves submitted an application on 8th February 1993 for bringing on record the LRs of the defendant, therefore, the suit could not have proceeded without deciding that application and the Court was under obligation to issue notice of the application to the LRs of the sole defendant. Therefore, the appellate Court's finding that the plaintiffs were not required to submit any application for bringing on records the LRs of sole defendant as the trial Court had already passed the ex-parte order against the defendant is set aside."

4. The learned counsel for the petitioners further submitted that the sub-rule (4) of Rule 4 of Order 22 of the Civil Procedure Code nowhere permits the parties themselves to exercise the discretion of not impleading the Legal Representatives of any of the defendant, who has not filed written statement or who has not appeared to contest the suit.

5. In the case on hand, when the defendants 2 and 3 were alive, they were set ex-parte. Therefore, the respondents being the plaintiffs, there is no need to take an application to dispense them from bringing on record the Legal Representatives of the deceased/defendants 2 and 3 to the suit.

However, the respondents 1 and 2 filed a petition and the same was allowed.

Therefore, this Court finds no infirmity or illegality in the order passed by the Court below.

6. Accordingly, this Civil Revision Petition is dismissed. However the suit is for partition and as such, the legal heirs of the deceased/defendants 2 and 3 are at liberty to file a petition to implead themselves in the suit filed by the respondents 1 and 2. Consequently, the connected Miscellaneous Petition is closed. No costs.

02.03.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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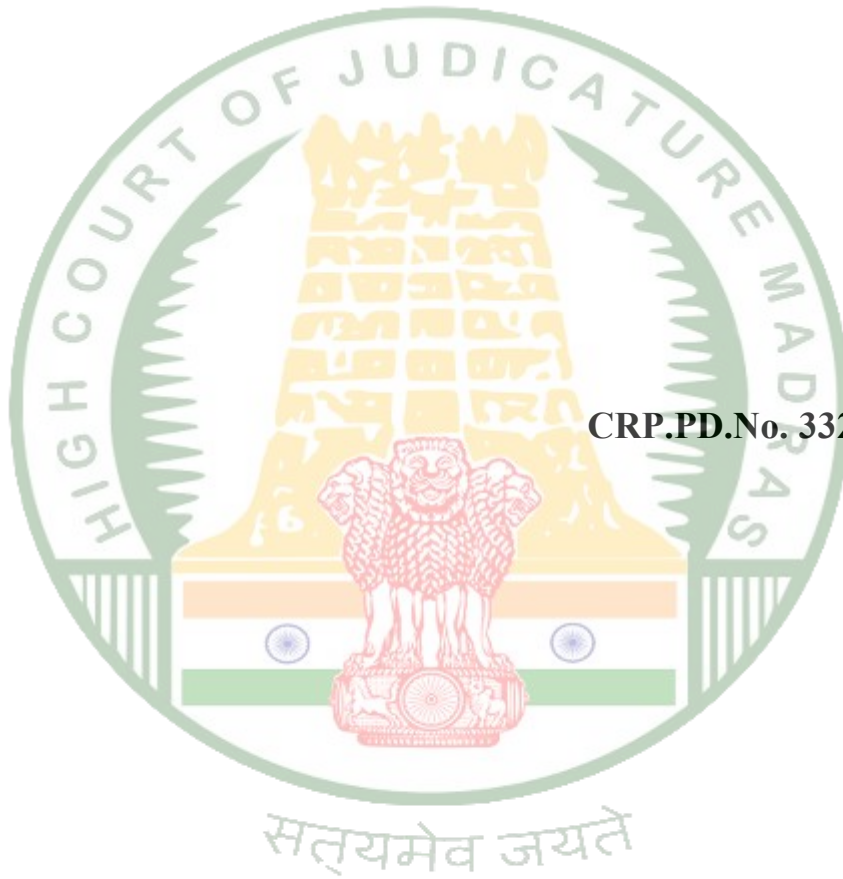
To

The Principal Subordinate Judge, Tiruppur.

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G.K.ILANTHIRAIYAN,J.

Kv



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