

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2021

CORAM

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

C.R.P.(NPD) No.569 of 2017

and

C.M.P.No.2836 of 2017

S & S Foundations
represented by its Managing Director,
S.Sathyanarayanan,
S/o.K.Sundararaj
No.45, Giriappa Road,
T.Nagar, Chennai-17.

... Petitioner

Vs

Thiripurasundari (Died)
1.Elumalai
2.Govindasamy

... Respondents

Prayer :- Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair order and decretal order dated 11.03.2016 made in I.A.No.218 of 2014 in A.S.No.13 of 2011 on the file of the Additional District and Sessions Judge, Kancheepuram District at Chengalpattu.

For Petitioner : Mr.P.G.Padmanabhan
For Respondents : Mr.P.B.Ramanujam

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 11.03.2016 made in I.A.No.218 of 2014 in A.S.No.13 of 2011 on the file of the Additional District and Sessions Judge, Kancheepuram District at Chengalpattu, thereby allowing the petition filed under Order 22 Rule 4A of Civil Procedure Code.

2. **The petitioner is the respondent and the respondents are the proposed appellants.** The respondent filed a suit for specific performance and the same was decreed by a Judgment and Decree dated 08.10.2010. Aggrieved by the same, the second defendant in the suit preferred an appeal suit. Pending suit, the sole appellant and the second defendant died on 08.09.2012. The proposed appellants viz., the respondents herein filed a petition to permit them to proceed with the appeal in the absence of a person representing the estate of the deceased second defendant in the suit. They further submitted that the second defendant died on 08.09.2012 and her father Kandasamy had executed a settlement deed in her favour without the power of alienation. Therefore, after her

death, the property has to be enjoyed absolutely by them. After the death of the second defendant, they are not able to trace out the settlement deed and after tracing out the same, filed a petition.

3. The provision under Order 22 Rule 4 of CPC, which reads as follows :

“4-A. Procedure where there is no legal representative – (1) If, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal representative, the Court may, on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the suit.

(2) Before making an order under this rule, the Court -

(a) may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit; and

(b) shall ascertain that the person proposed to be appointed to represent the estate of the deceased person is willing to be so appointed and has no interest adverse to that of the deceased person."

4. After filing of the appeal, the second defendant died on 08.09.2012. After her death, the respondents filed a petition to permit them to proceed with the appeal further. Though, the respondents filed an affidavit on the strength of the petition dated 14.02.1962, whether the settlement deed is traced or not will be observed only in the main appeal. Therefore, as per the provision under Order 22 Rule 4A, the respondents can be permitted to proceed with the appeal, since no prejudice will be caused to the petitioner. Therefore, the Court below had rightly allowed the petition.

5. In view of the above, this Court finds no illegality or infirmity in the order passed by the Court below. Hence, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

12.03.2021

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

To

1. The Additional District and Sessions Judge,
Kancheepuram District at Chengalpattu.

2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

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G.K.ILANTHIRAIYAN.J,

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