

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2021

CORAM

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

**C.R.P.(PD) No.2964 of 2018
and
CMP No.17327 of 2018**

A.Settu @ Salappan ... Petitioner

Vs

1. Vennila
2. Mahalakshmi

Manickammal (Deceased)

3. Kadiresan ... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 16.03.2018 made in I.A.No.29 of 2018 in O.S.No.9 of 2011 on the file of the District Munsif-cum-Judicial Magistrate, Pochampalli.

For Petitioner : Mr.T.M.Hariharan

For Respondents : No appearance

ORDER

This Civil Revision Petition is filed against the fair and decreetal order 16.03.2018 made in I.A.No.29 of 2018 in O.S.No.9 of 2011 on the file of the District Munsif-cum-Judicial Magistrate,

Pochampalli, thereby dismissing the petition to delete the third defendant in the suit.

2. The revision petitioner is the plaintiff and the respondents are the defendants. The petitioner filed a suit for bare injunction in respect of the suit property. Pending suit, the respondent filed a written statement. On seeing the written statement, by abundant caution, the petitioner filed a petition to implead the respondents 2 and 3 herein. Thereafter, they filed a petition to delete the third proposed defendant in the suit for the reason that the third proposed defendant is not necessary party to the suit proceedings. Order 22 Rule 4(4) of CPC is very clear that the plaintiff may exempt from substituting the legal representatives of any defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit.

3. In the present case, already the third proposed defendant was set ex-parte and thereafter she also died. Therefore, the petitioner is clearly exempted from taking steps to implead the legal representatives

of the deceased third proposed defendant.

4. In view of the above the order dated 16.03.2018 made in I.A.No.29 of 2018 in O.S.No.9 of 2011 on the file of the District Munsif-cum-Judicial Magistrate, Pochampalli, is hereby set aside and the Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed. No order as to costs.

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

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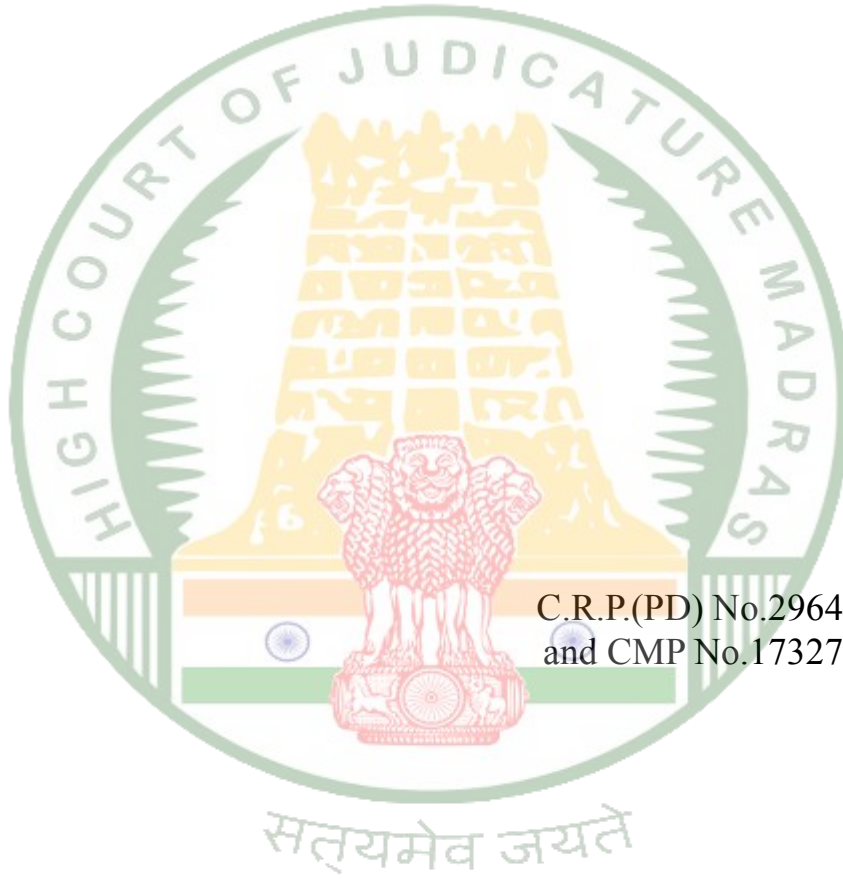
The District Munsif-cum-Judicial Magistrate,
Pochampalli.

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C.R.P.(P.D).No.2964 of 2018

G.K.ILANTHIRAIYAN,J.

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