

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2021

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.R.P.(PD).No.3811 of 2018
and C.M.P.No.21195 of 2018

1.V.Sundar,
Rep. by his Power Agent,
Mr.R.Veerappan.

2.Thilaka Joseph

...Petitioners

Vs

1.R.Sulochana

2.Doraikabali

... Respondents

(Notice may be dispensed with as
against the 2nd respondent)

Cause title accepted vide Court
order dated 30.10.2018 made in
C.M.P.No.16201 & 16202 of
2018 in C.R.P.Sr.No.65009 of
2018 (MSRJ)

Prayer Civil Revision Petition filed under Article 227 of the Constitution of India, prayed to set aside the fair and final order dated 27.03.2018 made in I.A.No.610 of 2014 in O.S.No.339 of 2012 on the file of the Sub-Court, Tambaram.

For Petitioner : Mr.L.Mouli
For R1 : No Apperance
R2 : Given Up

ORDER

This Civil Revision Petition has been filed against the order dated 27.03.2018 made in I.A.No.610 of 2014 in O.S.No.339 of 2012 on the file of the Sub-Court, Tambaram.

2.The case of the petitioners is that the petitioners are the plaintiffs in the suit filed for specific performance. The 2nd respondent/2nd defendant was passed away. Since the legal heirs of the 2nd respondent could not be traced out and the relief of specific performance is claimed as against the 1st respondent, the petitioners filed the application under Order 22 Rule 4 and Section 151 of CPC to exempt the petitioners from impleading the legal heirs of the deceased 2nd respondent. The Court below dismissed the said application filed by the petitioners stating that orders cannot be passed to exempt the petitioners from impleading the legal heirs of the deceased 2nd respondent since the petitioners have raised claim along with the 2nd respondent. Aggrieved by the same, the present Civil Revision Petition has been filed.

3.The learned counsel for the petitioners submitted that the sale agreement was entered by the 1st respondent with the petitioners and the 2nd respondent. The petitioners are unable to trace the legal heirs of the deceased 2nd respondent and undertakes to implead the legal heirs of the deceased 2nd respondent when they are able to trace them. He has also filed an affidavit to that effect.

4.He further submitted that a separate suit was filed by the petitioners in O.S.No.342 of 2002 and in that suit also the application in I.A.No.85 of 2013 was filed to exempt the petitioners from impleading the legal heirs of the deceased 2nd respondent and the same was dismissed by the Court below. Against which, C.R.P.No.2721 of 2015 was filed before this Court and the same was allowed on 23.12.2020, directing the Trial Court to proceed with the trial and conclude the same as early as possible.

5.Heard the learned counsel for the petitioners. Though notice has been served to the 1st respondent and her name is printed in the causelist, none appeared on behalf of the 1st respondent.

6.The relevant portion of the order dated 23.12.2020 made in CRP(NPD).No.2721 of 2015 is extracted hereunder:

“9.The present interlocutory application was filed under Order XXII Rule IV C.P.C. Therefore, it is necessary to look into the provisions under Order XXII Rule IV C.P.c., which is extracted as under:

“The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.”

10.In the present case, the suit was filed in the year 1986. The second defendant is one of the beneficiary to the sale agreement. Since the second defendant has not shown any interest to file the suit with the plaintiffs, he was shown as the second defendant in the suit. Further, he remained exparte in the suit by not appearing and contesting the suit. It is the case of the plaintiffs/revision petitioners that the second defendant/second respondent was set exparte as early as in the

year 1995 and the learned Subordinate Judge, Poonamallee, while deciding an application in I.A.No.1106 of 1991, has dispensed with the notice to the second respondent, since he remained ex parte in the suit. Therefore, the question of impleading the legal heirs of the deceased 2nd respondent/2nd defendant does not arise. Hence, the plaintiffs/revision petitioners are entitled to get benefits under Order XXII Rule 4 of the Civil Procedure Code.”

7. Upon perusal, it is seen that the sale agreement has been entered between the petitioners and the 1st respondent. Therefore, the suit has been filed seeking specific performance as against the 1st respondent. The 2nd respondent remains exparte in the suit. The petitioners have filed an affidavit undertaking to implead the legal heirs of the deceased 2nd respondent when they are able to trace them. As submitted by the learned counsel for the petitioners, in the similar circumstance, this Court considering the submission of the petitioners has exempted the petitioners from impleading the legal heirs of the 2nd respondent.

8. In view of the above and considering the undertaking affidavit filed by the petitioners, this Court is inclined to allow the Civil Revision Petition. The Court below is directed to proceed with the suit and in future, if the petitioners

filed any application to implead legal heirs of the 2nd respondent, the same shall be considered.

9. Accordingly, the Civil Revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

23.02.2021

Index: Yes/No
Internet: Yes/No
Speaking order/Non-speaking order

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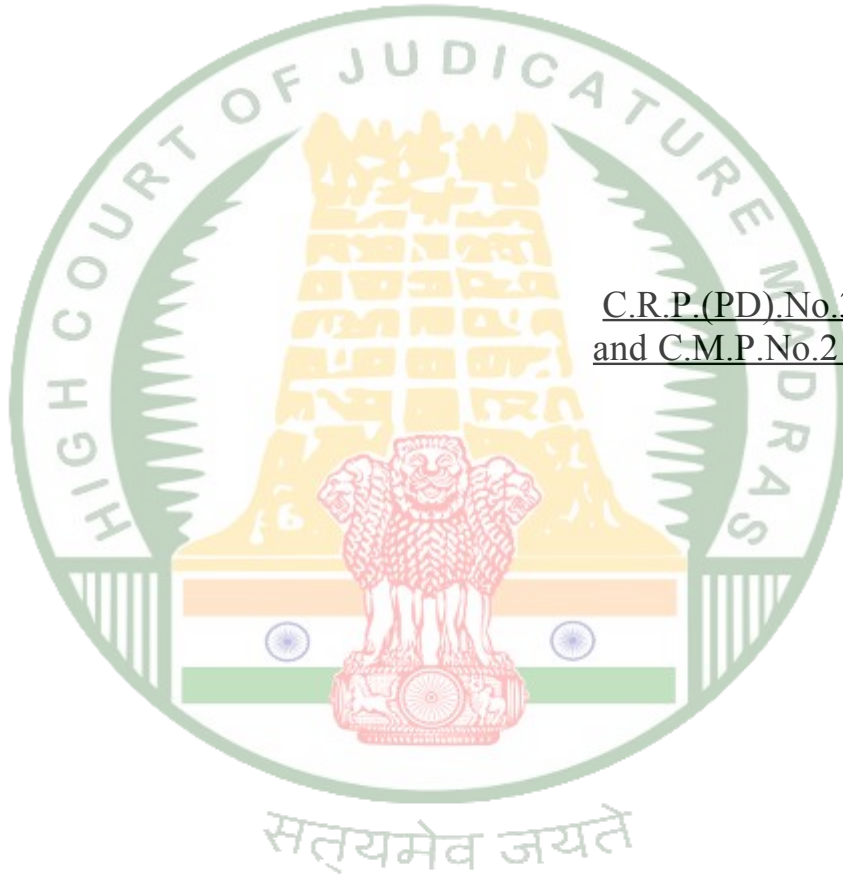
The Sub-Court, Tambaram.



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KRISHNAN RAMASAMY, J.

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