



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(PD) (MD)No.1640 of 2009

and

M.P(MD) No.1 of 2009

1.M.Jeyalakshmi
2.M.Senthamizh
3.M.Muthamizh
4.M.Painthamizh
5.M.Saravanan
6.M.Karthikeyan

... Petitioners/ Petitioners

Vs.

1.Lakshmi (died)
2.Murugesan Servai (died)
3.Mani
4.Mariappan
5.Amirthavalli
6.Pandi Meena
7.Raja Pandi
8.Shanthi
9.Chellapandi
10.Mallika

... Respondents

(RR6 to 10 are brought on record as LR's of the deceased R1 vide Court order dated 25.01.2021 made in C.M.P(MD) Nos.10478, 10479 and 10480 of 2019)

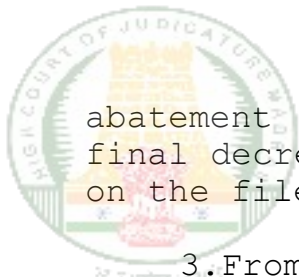
PRAYER:- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the order and decretal order dated 29.06.2009 made in I.A.No.182 of 2009 in I.A.No.318 of 2006 in O.S.No.80 of 2004 on the file of District Munsif Court, Sivagangai and allow this revision.

For Petitioners	: Mr.S.Srinivasa Raghavan
For Respondents	: No appearance

ORDER

This civil revision petition is filed by the proposed respondents, who are the legal representatives of the deceased first defendant.

2.The impugned petition is filed under the provision of Order 22 Rule 5(b) C.P.C r/w Section 5 of the Limitation Act to condone the delay of 466 days in filing the petition to set aside the



abatement caused due to the death of the first respondent in the final decree proceedings in I.A.No.318 of 2006 in O.S.No.260 of 2015 on the file of the learned District Munsif, Sivagangai.

3.From the records, it is seen that the first respondent herein had filed a suit in O.S.No.80 of 2004 for partition and separate possession of her 1/5th share in the suit schedule property, which consisted of six items of properties. The first defendant in the said suit namely Murugesan Servai and the other defendants are siblings. They are children of one Ramasamy. The preliminary decree was passed in the said suit on 26.09.2005 and the same was not challenged by the defendants. Thereafter, the first respondent herein had filed I.A.No.318 of 20016 for passing a final decree. Pending the final decree proceedings, the first defendant Murugesan Servai passed away on 03.08.2007. However, no steps have been taken by the first respondent/plaintiff to bring his legal heirs, on record. Thereafter, the petitioners came to know about the proceedings in the second week of September 2008. They had immediately contacted the counsel and they were informed that an *ex parte* final decree had been passed. Therefore, the petitioners had come forward with the petition to condone the delay in filing a petition to set aside the abatement caused due to the death of the deceased first defendant, to set aside the abatement and to bring on record the legal heirs.

4.The learned District Munsif, Sivagangai, by her order, dated 29.06.2009 dismissed the said application stating that since the preliminary decree had not been set aside and the final decree is passed in terms of the preliminary decree, a party who has not preferred any appeal, cannot question the final decree proceedings and seek to be impleaded. The learned Judge also observed that the first respondent / plaintiff had already taken steps to have the final decree passed, in which also, the defendants had not appeared. Therefore, the application filed by the legal representatives of the deceased first defendant was not maintainable. It is this order that is challenged by the petitioners herein.

5.Heard the learned counsel for the petitioners and perused the records. The respondents despite being served with notice had not appeared before this Court.

6.Admittedly, the first defendant had died pending the final decree proceedings and a final decree came to be passed after his death. Therefore, the final decree has been passed against the dead person. The plaintiff, who is none other than the sister of the deceased first defendant, ought to have taken steps to implead his legal representatives which exercise, she had failed to do. Therefore, the very final decree as against the first defendant, is *non-est*. The petitioners who are the legal representatives of the first defendant, have themselves taken steps to enter appearance in the above application and to bring themselves on record as the legal



representatives of the deceased first defendant. The reasons given for dismissing the above application by the learned District Munsif, Sivagangai, is totally erroneous and misdirected.

7.In these circumstances, this Civil Revision Petition is allowed and the order dated 29.06.2009 made in I.A.No.182 of 2009 in I.A.No.318 of 2006 is set aside. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:-

The District Munsif,
Sivagangai.

+2 CC to M/s.S. SRINIVASA RAGHAVAN, Advocate (SR-34629[F]
dated 16/11/2021)

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16.11.2021

NSN(CO)

GC(14.12.2021) 3P 4C