



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.11.2021

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THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P (PD) (MD) No.2732 of 2014

and M.P(MD) No.1 of 2014

WEB COPY

1.Athilakshmi
2.Natchiyarammal
3.Radhakrishnan
4.G.Venkataramanujam ... Petitioners/Petitioners/Plaintiffs
Vs.

1.Seenivasaragavan
2.Ramiah Thevar
Mani (Died)
3.Angappan
4.M/s.Agromira Energy and Infrastructure India Pvt Ltd.,
D.No.8, Josman Complex,
Sirukolas Road,
Sethur Pattinam
Chennai-31. ... Respondents/1,2,4,5 Respondents/
1 to 5 Defendants

5.Sheela Sri Kumar,
6.Seenasajan
7.Sheeja Harsh Kumar
8.Natarajan ... Respondents/6 to 8 Respondents/
Pro.6 to 8 Defendants/Legal heirs of 3rd Defendant
(Respondents 1,3,4 are given up, hence they were set ex-parte before
the Trial Court)

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 21.08.2014 made in I.A.No.932 of 2012 in O.S.No.254 of 2010 on the file of the District Munsif Court, Kovilpatti and allow this civil revision petition.

For Petitioners : Mr.T.Selvan
For R2 : Mr.A.Arumugam
For R5 to R-8 : Mr.N.Sudalaimuthu

ORDER

The plaintiffs, whose application to bring on record the legal heirs of the deceased third respondent Mani, under Order 22 Rule 9(2) C.P.C was dismissed, are the petitioners before this Court.

2.The petitioners/plaintiffs had filed a suit in O.S.No.254 of 2010 on the file of the District Munsif, Kovilpatti, for partition
<https://hcservices.ecourts.gov.in/hcservices/>



and separate possession of their 4/5 share in the suit schedule property and to declare the sale executed by the first defendant in favour of the third respondent on 31.03.1994 under two sale deeds being registered as Document Nos.315 of 1994 and 333 of 1994, as null and void. Pending the suit, the petitioners/plaintiffs had come forward with the impugned application to set aside the abatement caused due to the death of the third defendant and to bring on record his legal heirs, who had been arrayed as respondents 6 to 8 herein. The suit summon which was sent to the third defendant was returned with an endorsement "expired". This had prompted the petitioners to take out the impugned application. However, the respondents 6 to 9 had contested the application stating that the provision of Order 22 Rule 9(2) C.P.C could be invoked, if the party who had expired, was alive, when the proceedings were instituted.

3.In the instant case, the third defendant was no more even prior to the institution of the suit and therefore, the petition under Order 22 Rule 9(2) C.P.C is not maintainable. The learned District Munsif, Kovilpatti, dismissed the said application taking into account the above submissions. It is this application that is the subject matter of challenge.

4.After hearing both parties, this Court is of the view that the third defendant being purchaser and against whom the relief was sought for has to be represented in the proceedings. Therefore, the application in I.A.No.932 of 20212 filed under Order 22 Rule 9(2) C.P.C is treated as an application filed under the provision of Order 1 Rule 10(2) C.P.C and the respondents 6 to 8 are brought on record as defendants 6 to 8 in the above suit. Their impleadment as defendants does not preclude them from raising an issue regarding limitation. The plaintiffs shall take steps to amend the plaint accordingly and on the filing of such an application the same shall be allowed and the plaintiffs shall be directed to file the amended copy of the plaint. This exercise shall be completed within a period of three weeks from the date of receipt of a copy of this order.

5.In the result, this Civil Revision Petition is disposed of on the above lines. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



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,
Kovilpatti.

C.R.P (PD) (MD) No.2732 of 2014
25.11.2021

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nsn(CO)
TR(14.12.2021) 3P 2C