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C.R.P.(MD)No.2121 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.08.2021

Delivered on : 15.09.2021

CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

C.R.P. (MD)No.2121 of 2018

and

C.M.P. (MD)No.9384 of 2018

1.Rajagopalan (died)
2.Mallika
3.Rajkumar
4.Rajesh Kanna

... Petitioners / Respondents /
Defendants

Vs.

The Tamil Nadu State Transport Corporation Ltd.,
Kumbakonam.

... Respondent / Petitioner /
Plaintiff

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order and decretal order, dated 12.02.2018 in I.A.No.122 of 2017 in O.S.No.218 of 2004, on the file of the Additional District Court (Fast Track Court), Kumbakonam.

For Petitioners : Ms.AL.Gandhimathi
For Respondent : Mr.D.Sivaraman

ORDER

This Civil Revision Petition is filed against the order, dated 12.02.2018 in I.A.No.122 of 2017 in O.S.No.218 of 2004, on the file of the Additional District Court (Fast Track Court), Kumbakonam.

2.The revision petitioners herein are the defendants in the original suit and the respondents in the I.A. petition and the respondent herein is the plaintiff in the original suit and the petitioner in the I.A. Petition. The revision respondent herein filed a suit in O.S.No.10 of 1984, on the file of the Subordinate Judge, Kumbakonam, for a prayer of directing the defendant / Rajagopalan to render complete faithful account of all the cash receipts and disbursement for the period from 01.04.1982 till 11.11.1983 with respect of the Agency as Senior Assistant and incharge of Cashier or to appoint a Court Commissioner and to pass a decree for the amount, which may found to be due with interest 6% p.a. A preliminary decree was passed. The revision respondent



filed a petition in I.A.No.122 of 2017 for impleading the legal representatives of the deceased. That petition was allowed by the trial Court. Against the same, the revision petitioners have filed this revision.

3.On the side of the revision petitioners, it is stated that the suit was filed for a preliminary decree against the defendant / Rajagopalan, to submit account for the period from 01.04.1982 till 11.11.1983. The decree is a personal decree against the sole defendant. The revision petitioners 2 to 4 are proposed to be impleaded as the legal heirs in the execution petition. The decree is not executable against the legal heirs of the deceased. The personal action dies with the person and the cause of action will not survive against the legal representatives and the order is erroneous.

4.On the side of the revision petitioners, it is further stated that the suit was filed for submission of accounts. A preliminary decree was passed by the trial Court. The respondent herein / plaintiff filed a petition for appointment of a Court Commissioner, to verify the accounts. In the meanwhile, the then, defendant/ Rajagopalan died and the petition was filed to implead the revision petitioners as the legal representatives of the deceased. The accounts are not with the revision petitioners and prayed the order in the I.A. petition to be set aside.

5.On the side of the respondent, it is stated that the first revision petitioner / deceased was a Senior Assistant and Cashier, incharge of cash and collection. Two Original Suits (i) O.S.No.83 of 1984 and (ii)O.S.No.218 of 2004 were filed. There was misappropriation of Rs.31,50,805/- and a suit for recovery of money was filed. Preliminary decree was passed on 23.12.1986 and an appeal was filed after ten years. In between, the first petitioner filed a suit in O.S.Nos.698 and 699 of 1987 and both the cases were dismissed. The first defendant died and his legal representatives were to be impleaded in the suit.

6.A petition in I.A.No.44 of 2016 was filed for final decree. Only in a criminal cases, the allegation against a particular person will abate with the person. This is a civil case and a preliminary decree was passed for rendering accounts. The revision petitioners 2 to 4 are the legal representatives of the deceased, they are the successors of the properties of the deceased defendant and the account books and ledgers must have been in their custody.

7.In the above circumstances, impleading of the legal representatives of the deceased may be helpful for the disposal of the main case. Hence, it is decided that the revision petitioners



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are necessary parties in the suit. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

Ls

To

The Additional District Court
(Fast Track Court),
Kumbakonam.

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-29214[F] dated 15/09/2021)

C.R.P (MD) No.2121 of 2018
15.09.2021

ES (CO)

SB (22.09.2021) 3P 3C