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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	17.12.2020
DELIVERED ON	08.01.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD)No. 313 of 2017 (NPD)

Palaniammal ... Petitioner/Petitioner/Plaintiff

vs.

Alwar @ Rasu Kennadiyan (died)

1. Ponnaiah

2. Balakrishnan @ Balu

3. Pandi

4. Palaniyammal

... Respondents/Respondents/Defendants

PRAYER: Petition filed under Section 115 of the Civil Procedure Code, to set aside the petition order passed in E.P. No. 5 of 2015 in O.S. No.102 of 1998, dated 11.08.2015 on the file of the District Munsif Court, Nilakkottai and allow this Civil Revision Petition.

For Petitioner : Mr.R. Rajaraman

O R D E R

The Civil Revision Petitioner/Petitioner/Plaintiff has filed this revision petition against the order, dated 11.08.2015 in E.P. No. 5 of 2015 in O.S. No.102 of 1998 passed by the learned District Munsif, Nilakkottai.

2. I heard Mr.R. Rajaraman, learned counsel appearing for the revision petitioner and perused the material documents available on record.

3. The revision petitioner herein has filed a suit in O.S. No. 102 of 1998 on the file of the District Munsif Court, Nilakkottai for declaration, recovery of possession and permanent injunction, and the same was partly decreed on 19.11.2002. Against the decree, dated 19.11.2002, the deceased defendant has preferred an appeal in A.S. No. 238 of 2004 on the file of the Additional Sub Judge, Nilakkottai and the same was decreed as exparte on



30.01.2008. The revision petitioner/plaintiff who got decreed has filed a execution petition in E.P. No. 5 of 2015 in O.S. No.102 of 1998 and the same was dismissed for default on 11.08.2015. Aggrieved over the same, the instant Civil Revision Petition is filed.

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4. The learned counsel appearing for the revision petitioner submitted that the Court below has failed to note that the purview of the Order 22 Rule 10A of the Civil Procedure Code and insisted upon the petitioner/plaintiff to produce the legal heir certificate of the deceased defendant in the suit. He further submitted that the Court below has failed to note that the first respondent Ponnaiah S/o.Late.Alwar @ Rasu Kannadiyan admitted in his counter affidavit filed in E.P. No. 45 of 2012 in O.S. No. 102 of 1998 on the file of the District Munsif Court, Nilakottai that he is son of Late.Alwar @ Rasu Kannadiyan. He further submitted that the Court below has failed to note that the first respondent Ponnaiah admitted in his counter affidavit in E.P. no. 45 of 2012 in O.S. No. 102 of 1998 on the file of the District Munsif Court, Nilakkottai that his father has purchased the suit schedule property in the year 29.12.1976 and partition was made on 18.10.2012 among the legal heirs of the defendant late.Alwar @ Rasu Kannadi and the property was specifically allotted to the first respondent Ponnaiah. He further submitted that the Court below has failed to note that there is no necessity for the petitioner to produce the legal heir certificate of the deceased Alwar @ Rasu Kannadiyan. He further submitted that the Court below ought to have considered that there is no dispute with regard to the legal heirs of the deceased Alwar @ Rasu Kannadiyan.

5. The revision petitioner/plaintiff has filed a suit in O.S. No. 102 of 1998 for declaration, recovery of possession and for permanent injunction and the same was decreed on 19.11.2002. Against the order, dated 19.11.2002, an appeal was preferred by the deceased Alwar @ Rasu Kannadiyan in A.S. No. 238 of 2004 and the same was dismissed for default on 30.01.2008 and the decree, dated 19.11.2002 passed in O.S. No. 102 of 1998 was confirmed.

6. Thereafter, E.P. No. 45 of 2015 was filed in the year 2015 within limitation period. Even, in E.P. No. 45 of 2015, R-1 to R-4 were added as Legalheirs of the deceased Alwar @ Rasu Kannadiyan. Eventhough, summons were also served on R-1 to R-4 in E.P., they were set exparte. Only R-1 to R-4 can contest that they are not the legalheirs of R-1.

7. As per Judgment in **20162016(1)CTC, 61, Amsavalli (Died), 1). Selvaraj 2).Rajendran 3).Malika 4). Jayam 5). Manimeklai Vs. Sarangabani**, Parties, who have not obtained Legal Heir

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certificate, may file affidavit stating that persons are Legal representatives of the deceased by describing as to how they are legal representatives. Even in the Execution Petition, it is enough to the petitioner to file an affidavit.

8. Finally, the Civil Revision Petition is allowed and the order, dated 11.08.2015 passed E.P. No. 5 of 2015 in O.S. No.102 of 1998 is set aside. The learned District Munsif, Nilakkottai is directed to obtain an affidavit for the Legal heirs from the petitioner and decide the Execution Petition in E.P.No.5 of 2015 on merits and expeditiously as possible. No costs.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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To

1) The District Munsif,
Nilakkottai.

2) The Section Officer-2 copies
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.R.RAJARAMAN, Advocate (SR-887[F] dated 18/01/2021)

Order made in
C.R.P. (MD)No.313 of 2017 (NPD)
08.01.2021

KM (27.01.2021) 3P 5C