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C.R.P (NPD) Nos.1415 & 1422 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2022

CORAM: **JUSTICE N.SESHASAYEE**

C.R.P (NPD) Nos.1415 & 1422 of 2022
and C.M.P. Nos.7333 & 7345 of 2022

C.R.P. (NPD) No.1415 of 2022

1.S.Rani
2.R.Karamchand
3.R.Deepa
4.R.Swetha

... Petitioners

Vs.

N.Sevanan (Deceased)

1.Amulu
2.Rambai
3.Mani
4.Radha
5.Yesodha
6.Kannagi

O.B.Lingam (Deceased)

7.L.Bheeman
8.L.Raman @ Shankaran
9.L.Desingh
10.L.Shivan
11.Rani
12.Sakthi

Iyyamma (Deceased)
S.Matha Gowder (Deceased)



- 13.H.M.Kalu
- 14.M.Arjunan
- 15.M.Raman
- 16.R.Elango @ Muthu

M.Bellu Gowder (Deceased)

- 17.B.Shankaran
- 18.B.Nagarajan
- 19.M.Nanjan
- 20.M.N.Bheeman
- 21.M.N.Arjunan

M.N.Raju (Deceased)

- 22.N.Shivan
- 23.H.Selva Kumar

Chinnammal (Deceased)

- 24.The Head Master
Government Higher Secondary School
Hosahattu, Thoraihatti Post
Udhagamandalam Taluk
Nilgiris District

- 25.The Commissioner
Panchayat Union
Udhagamandalam Taluk, Nilgiris District

- 26.S.Durairaj

S.Raman (Deceased)

- 27.S.Krishnamoorthy
- 28.Sreedevi
- 29.A.Radhika
- 30.A.Mahesh
- 31.A.Thilaga



C.R.P (NPD) Nos.1415 & 1422 of 2015

32.B.Vimala

33.B.Vijaya

Lakshmiammal (Deceased)

34.Babu

35.Seethaiammal

36.T.N.Rajkumar

37.T.N.Sivan

38.T.N.Devan

39.Lakshmi

40.Malliga

41.Mani

42.Kannamma

43.N.Raman

N.Karnan (Deceased)

44.Kamala

45.Bheeman

46.Ravi

47.Devi

48.Vijaya

49.Mathi @ Lakshmi

50.Janu

51.Babu

52.L.Joghee

53.L.Durai

54.L.Sundari

L.Mani (Deceased)

55.Malli

56.Lakshmi

57.Seethai

58.Uthami

59.Mathiammal

60.Lakshmiammal

61.S.Mohan Kumar

62.S.Rajammal

63.S.Meenakshi

... Respondents



C.R.P (NPD) Nos.1415 & 1422 of 2022

C.R.P. (NPD) No.1422 of 2022

1.S.Rani
2.R.Karamchand
3.R.Deepa
4.R.Swetha

... Petitioners

Vs.

1.S.Durairaj

S.Rman (Deceased)
2.S.Krishnamoorthy

N.Sevanan (Deceased)

3.Amulu
4.Rambai
5.Mani
6.Radha
7.Yesodha
8.Kannagi

O.B.Lingam (Deceased)

9.L.Bheeman
10.L.Raman @ Shankaran

L.Arjunan (Deceased)

11.L.Desingh
12.L.Shivan
13.Rani
14.Sakthi

Iyyamma (Deceased)

S.Matha Gowder (Deceased)



- 15.H.M.Kalu
- 16.M.Arjunan
- 17.M.Raman
- 18.R.Elango @ Muthu

M.Bellu Gowder (Deceased)

- 19.B.Shankaran
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- 21.M.Nanjan
- 22.M.N.Bheeman
- 23.M.N.Arjunan

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- 24.N.Shivan
- 25.H.Selva Kumar

Chinnammal (Deceased)

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- 33.B.Vijaya
- 34.Lakshmiammal
- 35.Babu
- 36.Seethaiammal



C.R.P (NPD) Nos.1415 & 1422 of 2015

37.T.N.Rajkumar

38.T.N.Sivan

39.T.N.Devan

40.Lakshmi

41.Malliga

42.Mani

43.Kannamma

44.N.Raman

N.Karnan (Deceased)

45.Kamala

46.Bheeman

47.Ravi

48.Devi

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50.Mathi @ Lakshmi

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53.L.Joghee

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55.L.Sundari

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57.Lakshmi

58.Seethai

59.Uthami

60.Mathiammal

Lakshmiammal (Deceased)

61.S.Mohan Kumar

Desingh (Deceased)

62.S.Rajammal

63.S.Meenakshi

... Respondents



PRAYER: The Civil Revision Petitions filed under Section 115 of the Civil Procedure Code to set aside the fair and final order dated 16.02.2022 passed by the learned District Judge, Udthagamandalam in the memos filed in I.A. No.55/2018 in ASCFR No.3210 of 2017 and I.A. No.102/2018 in ASCFR No.3214 of 2018.

For Petitioners in : Ms.S.Varsha
both CRPs

For Respondents in : Mr.P.Harish, Govt. Advocate
both CRPs for R24 & 25 in C.R.P. No.1415 &
for R26 & 27 in C.R.P. No.1422

COMMON ORDER

The plaintiff has lost a partition suit and has laid a first appeal, but with delay. In the meantime, a couple of defendants have passed away and he had filed memos before the court that there is no need to implead the legal representatives of those defendants. This is resisted by the other contesting defendants/respondents before the first appellate court. But the first appellate court, proceeded to record that memos. This is now under challenge.

2. Heard the learned counsel for the revision petitioners. If an appellant decides not to implead the legal heirs of a deceased respondent in all the cases, where the right of defence survives on the legal heirs of such deceased respondents,



the court can record only abatement of the case as against them. Today, even the appeal is not before the court and so far as the decree goes thus in favour of the defendants, therefore, the revision petitioners, legal heirs of the 21st defendant, do not have any right to force the appellants/respondents herein.

3. The learned counsel appearing for the revision petitioners submitted that the legal representatives of the 21st defendant filed their written statement and contested the suit, yet the learned Principal District Judge, Udhagamandalam, has overlooked and recorded the memos filed by the respondents/proposed appellants before him. The learned counsel further added that, it was a suit for partition and if the revision petitioners are not allowed to participate in the appeal, then their right would go unheard in the eventuality of the first appellate court taking the appeal on its file and decide the matter in favour of the plaintiff.

4. This court finds some considerable merit and contents in the submissions of the learned counsel for the revision petitioners. In terms of the procedural law, the appellant may not be forced to implead the legal heirs of the deceased defendant. Yet, the right of such legal representatives of the deceased defendant to be heard in any proceeding, affecting the substantial and procedural right,



cannot be denied. It may not have been appropriate for the learned Principal District Judge, Udhagamandalam, to have gone in meticulous details on the merit of the case. The revision petitioners are now at liberty to move the learned Principal District Judge to have themselves impleaded, as the legal representatives of the deceased 21st defendant in both the appeals, both of which are pending in the stage, where the court is required to consider the condonation of delay. The first appellate court, is now required to address the issue, uninfluenced by his analysis on facts that led to record the memos filed by the respondents herein.

5. The revision petitions are disposed of accordingly. However, there is no order as to costs. Consequently, the connected civil miscellaneous petitions are closed.

26.04.2022

Asr

To
The Principal District Judge, Udhagamandalam



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N.SESHASAYEE, J.,

Asr

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