



C.R.P(NPD)Nos.4498 & 4499 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>11.01.2022</i>
<i>Pronounced on</i>	<i>19.01.2022</i>

Coram

The Honourable Mr.Justice J.SATHYA NARAYANA PRASAD

C.R.P(NPD)Nos.4498 & 4499 of 2015

Chinna Anandhan (died)

1.Pavayee

2.Minor Anandharaj

Rep. by mother Pavayee

3.Minor Gunasekaran

Rep. by mother Pavayee

4.Minor Naveenkumar

Rep. by mother Pavayee

5.Kuppayee

...Petitioners in both C.R.Ps

Versus

1.Anandan

2.Mariammal

3.Chinnathayee

...Respondents in C.R.Ps



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Prayer in C.R.P(NPD) No.4498 of 2015:

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order made in I.A.No.137 of 2014 in I.A.No.268 of 2013 in O.S.No.75 of 2013 dated 28.11.2014 on the file of the Sub Court, Sankari.

Prayer in C.R.P(NPD) No.4499 of 2015:

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order made in I.A.No.138 of 2014 in O.S.No.75 of 2013 dated 28.11.2014 on the file of the Sub Court, Sankari.

For Petitioners
in both C.R.Ps : Mr.R.Marudhachalamurthy

For Respondents
in both C.R.Ps : No Appearance

COMMON ORDER

These Civil Revision Petitions have been filed by the petitioners challenging the fair and decreetal order passed by the learned Subordinate Judge, Sankari in I.A.No.137 of 2014 in I.A.No.268 of 2013 in O.S.No.75 of 2013 and I.A.No.138 of 2014 in O.S.No.75 of 2013 dated 28.11.2014



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respectively, dismissing the two Interlocutory Applications viz., I.A.Nos.137 & 138 of 2014 filed by the petitioners, under Order XXII Rule 3 and Section 151 of C.P.C, to recognize them as the legal heirs of the deceased plaintiff (Chinna Anandhan) and order to add and implead them as parties to the suit O.S.No.75 of 2013.

2. Heard the learned counsel for the petitioners. None appeared on behalf of the respondents.

3. The brief facts of the case are as follows:

The plaintiff (deceased Chinna Anandhan) has filed the suit O.S.No.75 of 2013 before the Sub Court, Sankari for the following reliefs:

(i) directing the respondents/defendants to divide the suit property into 18 equal shares considering the soil nature and providing all amenities and allot 10 such shares to the plaintiff and put him in separate possession of such allotted share failing which pass a preliminary decree for partition making provision for passing final decree by way of commissioner.



WEB COPY (ii) permanent injunction restraining the respondents 1 & 3/defendants 1 & 3, their men, agents, servants etc., from in any way and in any manner making any kind of alienation or encumbrance in the suit properties till the passing of final decree in the suit.

3.1. Subsequent to the filing of the suit O.S.No.75 of 2013, the plaintiff (Chinna Anandhan) died intestate on 19.05.2013 leaving behind his wife Pavayee, three minor sons viz., (i) Anandharaj (ii) Gunasekaran & (iii) Naveen Kumar and mother Kuppayee. After the death of her husband, the said Pavayee/first petitioner has filed the Interlocutory Applications in I.A.Nos.137 & 138 of 2014 before the Sub Court, Sankari, praying to recognize herself, her three minor sons/petitioners 2 to 4 and her mother in law/fifth petitioner as the legal heirs of the deceased plaintiff (Chinna Anandhan) and order to add and implead them as parties to the suit O.S.No.75 of 2013 filed by her husband/deceased plaintiff. The petitioners herein were proposed parties 2 to 6 in the suit.



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3.2. The learned Subordinate Judge, Sankari vide fair and decreetal order dated 28.11.2014 has dismissed the Interlocutory Applications filed by the petitioners, for the following reasons:

(i) the first petitioner/wife of the plaintiff has filed the affidavit alone in I.A.Nos.137 & 138 of 2014 and she has not filed the relevant petition to represent her minor sons/proposed parties 3 to 5/respondents 2 to 4 as mother/guardian.

(ii) the petitioners have not filed the Death Certificate showing the date of death of the deceased plaintiff (Chinna Anandhan) as well as the Legal Heirship Certificate of the deceased plaintiff namely Chinna Anandhan, issued by the Tahsildhar in their favour.

Aggrieved over the dismissal of I.A.Nos.137 & 138 of 2014, the petitioners have filed the present Civil Revision Petition before this Court.

4. The learned counsel for the petitioners submitted that both the Interlocutory Applications filed by the petitioners in I.A.Nos.137 & 138 of 2014 were dismissed by the trial Court, on the ground that the first



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petitioner has filed only the affidavit in those Applications and she has not filed the necessary petition and also, the petitioners have not produced the documents such as Death Certificate of the deceased plaintiff and Legal Heirship Certificate of the deceased plaintiff, issued in their favour.

4.1. He further submitted that he has filed the Additional Typed Set of Papers dated 08.11.2021 before this Court, in which, he has enclosed the following documents:

(i) Death Certificate of Arumugam (plaintiff's father/fifth petitioner's husband) dated 22.03.2013

(ii) Death Certificate of the Chinna Anandhan (plaintiff) dated 30.05.2013

(iii) Legal Heirship Certificate of Arumugam (plaintiff's father/fifth petitioner's husband) dated 12.03.2015.

Therefore, he prayed that the order passed by the trial Court may be set aside and these Civil Revision Petitions may be allowed.



5. As far as this case is concerned, the trial Court has passed the aforesaid order in I.A.Nos.137 & 138 of 2014, on technicalities. Now, since the copies of the aforesaid documents which are necessary to bring on record the petitioners as the legal representatives of the deceased plaintiff (Chinna Anandhan) are produced before this Court, the matter is remanded back to the trial Court for fresh consideration.

6. The first revision petitioner shall produce the same along with the necessary petition to receive the documents which is required under law and she may also file a petition to represent her minor sons in the capacity as mother/guardian, before the trial Court. On receipt of such documents and petition, the trial Court shall consider the same and pass appropriate orders on merits and in accordance with law and restore the suit O.S.No.75 of 2013 on file.

7. Considering the above circumstances of the case, the aforesaid order passed by the learned Subordinate Judge, Sankari is liable to be set aside.



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8. Accordingly, the fair and decreetal order passed by the learned Subordinate Judge, Sankari in I.A.No.137 of 2014 in I.A.No.268 of 2013 in O.S.No.75 of 2013 and I.A.No.138 of 2014 in O.S.No.75 of 2013 dated 28.11.2014 respectively is set aside and the matter is remanded back to the trial Court for fresh consideration.

9. In the result, these Civil Revision Petitions are allowed. Considering the fact that the suit is of the year 2013, the learned Subordinate Judge, Sankari is directed to dispose of the suit, as expeditiously as possible. No costs.

19.01.2022

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Index : Yes/No

Speaking Order (or) Non-Speaking Order



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To

The Sub Court,
Sankari.



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J.SATHYA NARAYANA PRASAD, J.

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Pre-Delivery order
in C.R.P(NPD)Nos.4498 & 4499 of 2015

19.01.2022