



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2022

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

C.R.P. (PD) No.2409 of 2022

V.Ganesan

...

Petitioner /
Plaintiff

versus

1.Accha Alias Dakshinamoorthy
2.Mathiazhagan
3.Murugamani
4.Muthumani

...

Respondents /
Defendants

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the docket order dated 23.12.2021 made in I.A.No1 of 2020 in O.S.No.66 of 2004 pending on the file of the learned District Munsif, Nagapattinam.

For Petitioner

: Mr.K.M.Subrahmaniam



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ORDER

This Civil Revision Petition has been preferred challenging the docket order of the learned District Munsif, Nagapattinam, dated 23.12.2021 made in I.A.No1 of 2020 in O.S.No.66 of 2004.

2. The revision petitioner is the plaintiff who had filed the Interlocutory Application in I.A.No1 of 2020. The impugned order is passed as under:-

“Petition to be filed. Hence returned”

3. The petitioner filed I.A.No1 of 2020 for seeking permission of the Court to allow him to withdraw a sum of Rs.2,18,000/- which is said to be the part of decree amount involved in O.S.No.66 of 2004; when notice was ordered to the respondents there was no objection from the petitioner. But only after notice was returned that R-1 and R-4 died, the revision petitioner made his objection stating that it is not possible to implead the legal representatives of R-1 and R-4 and hence, notice against R-1 and R-4 should be dispensed.



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4. But the notice already sent to R-1 and R-4 was returned as R-1 and R-4 died. Hence consequential orders have been passed for filing steps for R-1 and R-4. Instead of taking steps for R-1 and R-4 the petitioner has filed a memo stating that the respondents were already set *ex parte* and for the deceased respondents 1 and 4 there are no legal heirs and hence the Court should pass further orders. Even if the revision petitioner states that the deceased respondents 1 and 4 do not have any legal representatives, they have to file it in a form of affidavit and that can be construed as the compliance of the 'steps'. Without complying the earlier order the Court cannot circumvent its own proceedings and pass a final order.

5. The learned counsel for the revision petitioner now sought that a direction may be given for effecting substitution of service. It is again the question against whom substitution of service should be effected. Unless the legal representatives of the deceased respondents 1 and 4 are impleaded and without complying the due procedure no order for substitution of service can be passed as wished by the petitioner.



6. In view of the above stated reasons, this Civil Revision

Petition is dismissed and the order dated 23.12.2021 passed by the learned District Munsif, Nagapattinam in I.A.No1 of 2020 in O.S.No.66 of 2004 is hereby confirmed. No costs.

10.08.2022

Speaking order / Non-speaking order

Index : Yes / No

Internet : Yes

sri

To

The District Munsif, Nagapattinam.



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R.N.MANJULA, J.

sri

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