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CRP.No.1648 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.1648 of 2019
and
C.M.P. No. 10746 of 2019

1. Susila,
2. Dhanakodi,
3. Manohar,
Sankar (Died)
4. Muthulakshmi,
5. Minor Saritha,
6. Minor Revathi,
(Minors 5 & 6 are represented by
Guardian Mother Muthulakshmi
4th petitioner herein)

.. Petitioners

Versus

R.K.Kumar (died)
1.M. Perumal,
2.K. Palanivel,
3.L. Bhagirath,
4.N. Jayachandran,
5.J. Vedhavalli,
5.J. Sundaravalli

.. Respondents



Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 17.12.2018 made in I.A. No.415 of 2018 in I.A. No.179 of 2017 in O.S. No.32 of 2011 on the file of the Additional District Munsif Court, Cuddalore.

For Petitioners : Mr.R. Muralidharan

For Respondents : Mr. M. Viruthagiri for R1 to R6

ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decreetal order dated 17.12.2018 made in I.A. No.415 of 2018 in I.A. No.179 of 2017 in O.S. No.32 of 2011 on the file of the Additional District Munsif Court, Cuddalore.

2. The petitioners herein are the defendants and the respondents herein are the plaintiffs in the original suit.

3. The case of the petitioners is that one Mr.R.K. Kumar who was the plaintiff, has filed the suit in O.S. No.32 of 2011 seeking for



declaration of his title to the suit schedule property against the defendants.

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The same was dismissed for default on 02.07.2016 since the said plaintiff being called absent during the hearing date. In the mean time, the suit property was settled in his daughter favour. His daughter sold out the suit property to the third party. Subsequently, the said plaintiff along with other purchasers of the suit property has filed I.A. No.179 of 2017 to restore the same. In the mean while, as the 1st plaintiff, R.K. Kumar died, other plaintiffs have filed I.A. No.415 of 2018 to amend the application in I.A.No.179 of 2017 by adding the word "died" after the name of the 1st plaintiff without impleading the legal heirs of the 1st plaintiff in the suit since the bonafide purchasers of the suit property are already on record. After hearing both sides, the Trial Judge allowed the application by order dated 17.12.2018. Not satisfied with the aforesaid order, the defendants have filed the present Civil Revision Petition to set aside the same.

4. The learned counsel for the petitioners would submit that the said sale transactions are not bonafide and forged one. Hence, the plaintiffs who are said to have purchased the suit property, cannot claim any right independently unless the heirs of the deceased R.K. Kumar establish their



right in the Court. Therefore, the legal representative of the deceased have to be brought on record as per Order 22 Rule 3 of CPC. The legal representatives alone can file amendment petition after they brought on record in the application as the title of the suit property is to be finalized on merit by the Trial Court. In support to his argument, he has relied on the Judgment dated 25.09.2018 passed by this Court in the case of “*Laggrave Jayaseeli Vs. Trinite Modestine and Ors*” reported in MANU/TN/6747/20118. Hence, the order dated 17.12.2018 passed in I.A. No.415 of 2018 is liable to be set aside.

5. The learned counsel for the respondents would submit that during the pendency of the suit, the 1st plaintiff died who had executed a settlement Deed in respect of suit property in favour of his daughter Meena. Subsequent to execution of settlement Deed, his daughter has sold the portion of properties, to third parties who are on record in the petition. The plaintiffs/respondents herein have acquired interest over the suit property by way of valid sale deed and hence there is no need to implead the legal heir of the 1st plaintiff since the entire suit property was sold to the respondents herein. In view of the death of the 1st plaintiff, other plaintiffs



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who are the purchaser of the suit property, have filed the Application in I.A. No179 of 2017 to amend the application by adding the word of "died" after the name of the 1st plaintiff. In support of his argument, the learned counsel for the respondent relied upon the decision of this Court passed in the case of *Mariaprakasam Vs. Upakaramary & 5 others reported in 2005-2-L.W.252*. Hence, as the purchaser of the property has transposed as plaintiff in the suit, there is no necessity to implead the legal heirs of the main plaintiff in the suit since the entire property was sold out. After considering oral and documentary evidence, the Trial Court allowed the same and hence no interference is required in that order.

5. Heard the learned counsel for the petitioners and the respondents as well as perused the materials available on record.

6. On a perusal of the records, it is seen that the suit in O.S. No.32 of 2011 was originally filed by one Mr. R.K. Kumar seeking for declaration of title over the suit property and permanent injunction against the defendants. The same was dismissed for default on 02.07.2016 due to absent on the side of the plaintiff on the date of hearing. During the



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pendency of the suit, the 1st plaintiff had executed a settlement Deed in respect of suit property in favour of his daughter Meena. Subsequent to execution of settlement Deed, his daughter has sold the portion of properties, to third parties through Registered Sale Deed. While the main plaintiff and the purchasers of the suit property filed I.A. No.179 of 2017 to restore the suit in O.S. No.32 of 2011 claiming over the suit property, the main plaintiff died. Even though the purchasers are on record in the petition in view of the devolution of interest in the suit property by way of Sale deed, the suit filed by the main plaintiff died during the pendency of the suit who alone sought for declaration of title in the suit property against the defendants. The same was dismissed for default without hearing contentions of both sides. While being so, the legal heir of the main plaintiff ought to have been impleaded in the restoring suit to put forth their averments with regard to suit property sold to the third parties during the pendency of the suit. Only after impleading the legal heirs of the deceased in the suit, the suit would be disposed of on merit after full fledged trial or otherwise it will lead multiple suit proceedings. No prejudice would be caused to other plaintiffs as they are said to be bonafide purchaser of the suit property. Hence, the findings of the Trial



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Court is hereby set aside and the Trial Court is hereby directed to implead the legal heirs of the deceased/1st plaintiff in the suit and dispose of the case after full fledged trial as expeditiously as possible.

7. In the result, the Revision Petition stands allowed and consequently connected miscellaneous petition is closed. No costs.

31.10.2022

Lbm

Index : Yes/No

Speaking Order : Yes/No

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1. The Additional District Munsif Court, Cuddalore.
2. The Section Officer, V.R.Section
High Court, Madras.

T.V.THAMILSELVI, J.



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