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C.R.P.(PD) No.1678 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2022

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THE HONOURABLE Ms. JUSTICE R.N.MANJULA

C.R.P.(PD).No.1678 of 2022

and

C.M.P No.8341 of 2022

Maria Susai (dead)

1. Margaret Mary
2. Josephine Margaret
3. Anitha Jose

... Petitioners

Vs.

1. Sebasthiammal
2. Savuriyappan
3. Francis
4. Gurvinder Singh
5. Mother, Annai Teresa
Missonaries of Charities
Selliampatti Village
Palacode Taluk
Dharmapuri District.
6. Father Periyannayagam
Provincial OCD Trust
Tamil Nadu Carmelite Province
Sirumalai Nagar, Manikandam
Thirucirapalli
7. No.2 Joint Sub Registrar
No.2 Joint Sub Registrar's Office
Dharmapuri Town, Dharmapuri.

... Respondents



PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 17.02.2022 passed in I.A.No.628 of 2019 in O.S.No.139 of 2009 by the learned District Munsif, Palacode.

For Petitioner : Mr.R.Selvakumar
For R7 : Mr.P.Harish,
Government Advocate

ORDER

This Civil Revision Petition has been filed challenging the order of the learned District Munsif, Palacode, dated 17.02.2022 passed in I.A.No.628 of 2019 in O.S.No.139 of 2009.

2. The petitioners are the plaintiffs in the suit. At some point of the proceedings, the suit got dismissed due to the non-appearance of the plaintiffs and thereafter, these revision petitioners filed a petition to restore the suit in I.A.No.433 of 2017. The copy of the petition was served on the learned counsel for the defendants. The learned counsel made an endorsement that the notice should be sent to D1 and D6 directly. On



30.04.2019, the learned trial Judge has made an endorsement that the private notice sent for R1 was served and R1 was set exparte in the said petition. Thereafter, I.A.No.433 of 2017 was allowed and the suit got restored. Subsequently, the revision petitioners who are the plaintiffs in the suit has filed a petition in I.A.No.628 of 2019 for issuing an order for the appearance of the 1st defendant. The said petition was dismissed on 17.02.2022. Aggrieved over that, this civil revision petition has been preferred.

3. The learned counsel for the revision petitioners submitted that he has filed a petition to restore the suit and the learned counsel who contested the impugned petition in I.A.No.628 of 2019 on behalf of R1 endorsed that the notice to be sent to the 1st respondent/1st defendant directly. He further submitted that since the 1st respondent/1st defendant was set exparte in I.A.No.433 of 2017, it created a doubt whether the 1st defendant is in fact alive or not.

4. To confirm whether the 1st defendant is alive or not the petitioner filed a petition before the trial Court to order for the appearance of the 1st



defendant.

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5. The records would show that the 1st defendant is living in Malaysia and her counsel continued to hold the brief on her behalf, then I.A.No.628 of 2019 was taken up for consideration. Just because, a party lost contact with the counsel at some point of the proceedings, especially when I.A.No.433 of 2017 was filed, and thereafter resumed contact and on her instruction, the counsel made his appearance in I.A.No.628 of 2019, it cannot be doubted whether the party concerned is alive or not.

6. If the trial Court itself gets any doubt about the existence of the 1st respondent/1st defendant, the Court itself would have issued summons for the personal appearance of the 1st defendant. Unless, the counsel for the 1st respondent reports that the 1st defendant is dead, there need not be any doubt that the 1st defendant is alive or not. Since the learned trial Judge did not feel the necessity to summon the 1st defendant and to make her personal appearance from Malayasia, he dismissed the petition.



C.R.P.(PD) No.1678 of 2019

7. In view of the reasons stated above, I do not find any infirmity or illegality in the order passed by the learned trial Judge and it does not warrants any interference.

8. Accordingly, the Civil Revision Petition is dismissed and the fair and decreetal order passed in I.A.No.628 of 2019 in O.S.No.139 of 2009 dated 17.02.2022 by the District Munsif, Palacode, is hereby confirmed. No Costs. Consequently, connected Miscellaneous Petition is closed.

10.06.2022

Index : Yes/No
Speaking Order : Yes / No
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To

1. The District Munsif
Palacode.
2. The Section Officer,
VR Section, Madras High Court,
Chennai.



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R.N.MANJULA, J.,

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