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*C.M.P.No.5622 of 2020 in
S.A.No.1481 of 2011*

**C.M.P.No.5622 of 2020
in S.A.No.1481 of 2011**

V. LAKSHMINARAYANAN,J.

This is an application to bring on record the legal representatives of one deceased O.P.Muthiah. The said O.P.Muthiah filed Second Appeal No.1481 of 2011 against the judgment and decree dated 15.11.2010 in A.S.No.48 of 2009 on the file of the Subordinate Court, Mannargudi. The said appeal arose as against a suit presented for the dissolution of a partnership firm. Pending the Second Appeal, unfortunately O.P.Muthiah died. Today, in this application the dispute is not between the legal heirs of the deceased partner O.P.Muthiah and Gurunathan Chettiar, but inter se between the legal heirs of O.P.Muthiah.

2. Mr.Jagadish, learned counsel for the petitioners in C.M.P.No.5622 of 2020 would submit that the petitioners herein are the daughter-in-law and grandchildren of O.P.Muthiah. The first petitioner is the daughter-in-law / wife of Late Mahalingam S/o O.P.Muthiah and the petitioners 2 and 3 viz., Karthi and Arthi are the grandchildren of O.P.Muthiah, children of Mahalingam, the pre-deceased son of Muthiah.

3. Mr.M.Renton learned counsel appearing for Mr.S.Mahimai Raj, learned counsel for the respondents 2 and 3 would submit that an application had been



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filed in C.M.P.No.5362 of 2017 to bring on record the legal representatives of the deceased O.P.Muthiah and that having been ordered and not challenged by the petitioners herein, it is not open to them to file an application in C.M.P.No.5622 of 2020.

4. His second submission is that, on the basis of the order in C.M.P.No.5362 of 2017, he had taken out two applications in I.A.Nos.47 and 84 of 2017 to delete the names of the legal representatives / petitioners herein in the final decree proceedings and that had been allowed. The said order had not been challenged and therefore, C.M.P.No.5622 of 2020 is not maintainable.

5. Thirdly, he would state that he took out an application in O.P.No.2 of 2015 to get a probate of the estate of Late O.P.Muthiah and the same had been ordered on 11.04.2022 and since that has also been allowed and not been challenged, this C.M.P. is not maintainable.

6. In reply, learned counsel for the petitioners Mr.Jagadish would bring to the notice of this Court that C.M.P.No.5362 of 2017 was allowed because the respondents had no objection to the application and he would further state that insofar as the two applications in I.A.Nos.47 and 84 of 2017, the same had



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been allowed due to the fact that on the date on which the applications were called on for hearing, their counsel was no more and that had not been put on notice. Last but not the least he would state that, as against the order in O.P.No.2 of 2015, he has preferred an appeal in C.M.A.SR(MD) No.76706 of 2022 and the same is pending numbering.

7. I have applied my mind to the arguments on either side and I feel that none of the submissions opposing the application are tenable. The Civil Procedure Code under Section 2(11) has stated that, a legal representative includes any person who inter meddles with the estate of the deceased person and also the person on whom the estate devolves upon the death of the party so suing or sued. Here is a case where the relationship of the parties are not denied. In other words, it is accepted that the petitioners are the legal heirs of the deceased O.P.Muthiah. The Court, while allowing an application under Order 22 does not conduct a mini trial, nor does it confer any right on any party merely because the application stands allowed. The objection that in final decree their names were deleted is of no consequence because, the present appeal is as against the preliminary decree and the final decree proceedings have been initiated pursuant to the permission granted by the Court that final decree proceedings may go on and no final decree must be



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passed. The order deleting the legal representatives does not operate as *res judicata* as these are applications conducted in the course of trial of the proceedings and by their very nature extremely procedural. If any authority is required for the said purpose, it is found in **AIR 1964 SC Page 993 Paras 13 and 14 (Arjun Singh -Vs- Mohindra Kumar and Others)**. The relationship between the parties having not been denied, this application is ordered.

8. Two memos are filed by the learned counsel for the appellant stating that Tmt.Rajam is dead and her daughter Vijaya is already on record and therefore there is no necessity to take steps to bring on record legal representatives of the deceased Rajam. Rajam herself is a legal representative of the deceased Gurunathan Chettiar. Taking steps for legal representative of a legal representative does not arise. Hence these memos are ordered.

9. Post the Second Appeal on **12.04.2023**.

27.03.2023

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