



C.R.P.No.2211 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.09.2023

CORAM

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.2211 of 2016
and
C.M.P.No.11465 of 2016

B.Manokaran

...Petitioner/4th Respondent/4th Defendant.

Vs.

1.Balasundaram(Died)
2.B.Kamalam
3.Padmaja

...Respondents/Respondents 1-3/Defendants 1-3.

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Final Order dated 16.03.2015 made in I.A.No.433 of 2014 in O.S.No.2444 of 2000 on the file of the IIIrd Additional District Munsif Court, Coimbatore.

For Petitioner : Mr.K.S.Karthik Raja

For Respondents :
For R1 : -No Appearance-
For R2 & R3 : -Steps Due-



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ORDER

One Balasundaram presented O.S.No.2444 of 2000. Pending the suit, he passed away on 06.02.2013. He has left behind his wife, sons and daughter to succeed his estate. The children had executed a release deed in favour of the wife of Balasundaram on 26.06.2013. On the strength of being the legal heir of the deceased Balasundaram and also on the basis of the release deed, his wife filed an application under Order 22 Rule 3 of the Code of Civil Procedure to continue the proceedings.

2.The application was opposed merely on two grounds that the application was filed belatedly and therefore, the suit had abated and second, no evidence was given before the court that the petitioner Mrs.Shanmugavadilu is the wife of the deceased Balasundaram. Both the objections were rejected and the applications were allowed. Aggrieved by the same, the present CRP is filed.

3.Heard Mr.K.S.Karthik Raja, learned Counsel appearing for the petitioner though respondents served but have not entered appearance.

4.The learned Counsel for the Petitioner submitted that the 3rd respondent passed away. He adds the legal heir already being on record



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in the capacity of the 4th respondent that there is no necessity to take steps. The said submission is recorded.

5.Insofar as the main revision itself is concerned, the learned Trial Judge has given a reasoning that the last day to file an application fell on 02.06.2013 a holiday and the application to bring on record was filed on 03.06.2013 on the very first working day after the court reopened from vacation. Therefore, the objections as regards the delay has to fail.

6.Insofar as the second submission is concerned that the relationship had not been proved before filing of an application to bring on record, I am afraid that there cannot be a trial within a trial. The Petitioner has specifically averred that she is the wife of Balasundaram and she had further stated the claim on the basis of the release deeds, executed by the sons and the daughters of Balasundaram in her favour. She is only representing the estate of the deceased plaintiff. For the said purpose, a separate trial need not be conducted in order to prove the legal heirship. If the petitioner suspects the legal heirship of the proposed plaintiff, it is always open to him to bring substantial materials at the time of the Trial and also seek an issue to be framed for the said purpose. A defendant cannot dictate as to who should be the plaintiff's legal representatives.



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V. LAKSHMINARAYANAN.J.

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7.In fine, the order and decretal order in I.A.No.433 of 2014 in O.S.No.2444 of 2000 on the file of the IIIrd Additional Munsif Judge dated 16.03.2016 stands confirmed. The CRP stands dismissed. No Costs. Connected Civil Miscellaneous Petition is closed.

19.09.2023

Index : Yes /No

Neutral Citations : Yes/No

nst

To:

Sub-Ordinate Judge,
Madurantakam.

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