



C.R.P.(NPD)No.2518 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)No.2518 of 2018
and C.M.P.No.15324 of 2018

Subramanian (died)
(Represented by his legal representative
2nd petitioner and 12th respondent)

S. Rajendirin

.. Petitioner

Vs.

1. V. Ganapathy (died)

2. G. Mohana (died)

3. Savithiri (died)

4. Saraswathi

5. Navaneetham

6. Gopal

7. Krishnaveni

8.Natarajan

9.Rajamanickam

10.Manoharan

11.Kowsalya

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12. Saimathy

13. G.Yamunabai

14. C.Kalarani

15. Rajarajeswari @ Anuradha

16.Dhandapani

17.Vijaya

18.Vimala

19.Kirubanandan

20.Maheshwari

21.Vijay Anand

22. G.Gopalakrishnan

23. G.Govindarasu

24.G.Ravi

25.Yamunabai

26.Comathi

27.Banumathi

... Respondents

(The 1st respondent viz., V.Ganapathy died and his legal heirs brought on record as the respondents 13 to 15 vide order of this Court dated 18.08.2023 made in C.M.P.Nos.18397, 18431 & 18434 of 2023 in C.R.P.No.2518 of 2023)

(The 2nd respondent viz., G.Mohana died and her legal heirs brought on record as the respondents 16 to 21 vide order of this Court dated 18.08.2023 made in C.M.P.Nos.18411, 18424 & 18428 of 2023 in C.R.P.No.2518 of 2023)

(The 3rd respondent viz., Savithiri died and her legal heirs brought on record as the respondents 22 to 27 vide order of this Court dated 18.08.2023 made in C.M.P.Nos.18401, 18409 & 18437 of 2023 in C.R.P.No.2518 of 2023)



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PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 09.03.2018 passed in I.A No.407 of 2012 in I.A No.1447 of 2003 in O.S No.327 of 1998 on the file of the Additional Sub Court, Puducherry.

For Petitioner	:	Ms. G. Lavanya for Mr. T. Sai Krishnan
For RR6 to 9,11, 13 & 14	:	Mr. P.Dinesh Kumar for Mr.D.Ravichandar

ORDER

This revision arises against an order passed by the learned Additional Sub Judge at Puducherry in I.A.No.407 of 2012 in I.A.No.1447 of 2003 in O.S.No.327 of 1998, dated 09.03.2018.

2. O.S.No.327 of 1998 is a suit for partition. A preliminary decree was passed on 11.11.1999. Thereafter, an application was taken up for passing of a final decree in I.A.No.1447 of 2003. A final decree was passed on 06.07.2011. To set aside the same, an application was filed in



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I.A.No.407 of 2012. It is not in dispute that Mr.Subramanian, the first defendant died on 06.03.2011 leaving behind (1) Mrs.Visalatchi (wife) (2) Rajendirin (son) (3) Vassoudevane (4) Radjesvary (5) Babou (6) Vasantha (7) Narayanan and (8) Saimathy. The legal heirs of said Subramanian had executed a joint Release deed on 08.11.2011 releasing their right in favour of the petitioner/Rajendirin.

3. The claim of the petitioner before the trial Court is that on the date of passing of the final decree, his father Subramanian was no more and without bringing on record the legal representatives of Subramanian, the final decree came to be passed. He would also point out that two other parties namely, one Mohana and Savithiri also were no more on the date of passing of the final decree.

4. A detailed counter was filed by the contesting respondent stating that Subramanian did not contest the final decree. It is on record that Subramanian had entered appearance and filed his counter, but did not address the arguments in the same.



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5. The learned trial Judge took up an application for hearing and dismissed the same relying upon the Order XXII Rule 4(4) of C.P.C. Against the said order, the present revision has been filed.

6. Heard Ms.G.Lavanya, the learned counsel representing Mr.T.Sai Krishnan for the petitioner and Mr. P. Dinesh Kumar, the learned counsel representing for the respondent. I have gone through the records and carefully perused the impugned order.

7. The factum of death of Subramanian, is not in dispute. The said Subramanian died on 06.03.2011. The final decree came to be passed on 06.07.2011. In order to invoke Order XXII Rule 4(4) of C.P.C., the Court should come to a conclusion that the defendant “failed to appear and contest the suit at the hearing”. In this particular case, the factum that the said Subramanian had contested the proceedings is not in dispute because he has filed a counter to the final decree proceeding. The final decree proceeding was initiated on 07.03.2003. To the said final decree



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application, Subramanian had also filed a detailed counter. Having gone on record by way of a counter, I cannot hold that he had failed to appear and oppose the application. If Order XXII Rule 4(4) of C.P.C. has to apply, the petitioner's father Subramanian should not have shown any interest in the litigation at all.

8. On the contrary, the learned Judge herself had recorded in paragraph 10 that Subramanian entered appearance and even filed a counter, but did not participate in the execution of the warrant issued to the Advocate Commissioner. The mere fact that he did not participate in the warrant of the Advocate Commissioner does not mean, he is not contesting the application.

9. An Advocate Commissioner in the final decree proceeding merely suggests the mode of division to the Court. A party might not have any opposition for the visit by the Advocate Commissioner, but he might have objection to the mode suggested by the former. In such



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circumstances, if the Court set the defendant exparte and had proceeded further, I am certain, Order XXII Rule 4(4) of C.P.C. will be applicable and I would have confirmed the order of the trial Court. However, on the date of passing of the final decree, a counter was on record, which was not adverted to by the learned trial Judge.

10. Therefore, I am of the opinion that Order XXII Rule 4(4) of C.P.C. does not apply and the final decree had been passed against a dead person. Consequently, the order of the trial Court has to be set aside and it is accordingly set aside. The trial Court is requested to take up the proceedings from the time of the submission of the report of the Advocate Commissioner. Therefore, the proceedings will be reopened from the time, the Advocate Commissioner submitted his report. The petitioner is permitted to file the objections if any, to the Advocate Commissioner's report. The trial Court shall after perusal of the report and the objections, pass a fresh final decree. It is made clear that the trial Court need not appoint a fresh Advocate Commissioner as the father of the civil revision



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petitioner Rajendirin did not participate in the said proceedings.

11. The trial Court would be cautious before passing a final decree to verify if all the parties are alive and thereafter, proceed further. The said exercise will be completed within a period of six months from the date of receipt of a copy of this order, in any event, on or before 31.03.2024.

12. With the above directions, the Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

18.08.2023
(4/4)

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
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To
The Additional Subordinate Judge
Puducherry.



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V.LAKSHMINARAYANAN,J.

Kj

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