



C.R.P.No.579 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P..No.579 of 2016
and
C.M.P.No.2988 of 2016**

V.R.Chandrasekaran

.. Petitioner

Vs.

P.M.Vasudeva Reddiar (Died)

1. M.K.Munirathina Chetty

2. S.R.Radhakrishnan

3. C.P.Chandrasekaran

G.Nagarajan (Died)

4. N.G.Harinathan

5. Zulaikha Begum

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the order dated 27.10.2015 made in un-numbered Memo No.... of 2014 in A.S.No.3 of 2013 on the file of the Additional District Judge, Vellore.



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For Petitioner : Mr.C.Prabakaran
For Respondents : R1 - died
Ms.M.Jayakiruba for R2
Ms.A.Dipthi Munoth
for Mr.K.V.Babu for R3 and R4
R5 - NRN

ORDER

This revision is at the instance of the plaintiff, who is the first respondent in the appeal. O.S.No.319 of 2001 is a suit for specific performance of agreement of sale. The property originally belonged to one Zulaikha Begum. She had sold the property to the defendants 2 to 7. The defendants 2 to 7 are partners of a Firm by name and style of Devi Chit Enterprises. They had purchased the property on 11.11.1998.

2. Projecting agreement of sale dated 28.09.1998, a suit for specific performance had been presented. The merits of the suit are irrelevant for the purpose of disposal of the revision as it is the subject matter of the regular appeal in A.S.No.3 of 2013.



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3. Pending the appeal, a memo came to be filed by the appellants stating that the first partner, namely P.M.Vasudeva Reddiar and the fifth partner, namely G.Nagarajan are no more. The memo also stated that since it is a partnership Firm, invoking Order XXX Rule 4 (1) of Civil Procedure Code, steps have not been taken to implead the legal representatives of the deceased partners. The memo was recorded holding that as per Clause 16 of the partnership deed, on the death of the partners, the legal representatives are not automatically impleaded as partners to the Firm and therefore, there is no necessity to implead them.

4. Seemingly aggrieved by the said recording of the memo, the present revision has been presented by the plaintiff.

5. I heard Mr.C.Prabakaran, learned counsel for the petitioner, Ms.M.Jayakiruba, learned counsel for the second respondent and Ms.A.Dipthi Munoth, learned counsel appearing for the respondents 3 and 4.



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6. It is necessary to refer Order XXX Rule 4 of the Code of Civil Procedure for the disposal of this revision. Under Order XXX Rule 4 of C.P.C., two or more persons may sue or be sued in the name of a firm and if anyone of them dies, it is not necessary to bring on record the legal representatives of the deceased partner. I have to note that the plaintiff did not show the defendants 2 to 7 as partners, but had shown them only as individuals.

7. However, in order to substantiate the purchase made by the defendants 2 to 7, Ex.B10 had been filed. Ex.B10 is the sale deed dated 11.11.1998 under which the defendants 2 to 7 have purchased the property. It is prior to the presentation of the plaint. The purpose for which the subsequent purchasers are impleaded as parties to the suit of specific performance is to show that proper title is conveyed to the plaintiff. This has been settled by a judgment of the Supreme Court in the case of *Lala Durga Prasad and another vs. Lala Deep Chand and Others* reported in AIR 1954 SC 75.



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8. Going through Ex.B10, it is clear that the owner of the property is M/s.Devi Chit Enterprises, represented by its Partners. It is not an individual property of the defendants 2 to 7. That being the circumstance, the question of bringing on record of the legal representatives of the deceased partner does not arise.

9. Apart from that, it is an appeal at the instance of the defendants 2 to 7 and they have filed a memo to that effect that they do not want to implead the legal representatives of the deceased partners. Therefore, no prejudice would be caused to the respondents. In such circumstances, the plaintiff who is opposing the appeal cannot be said to be an aggrieved person.

10. Apart from that, as per the Indian Partnership Act, 1932 reads with section 88 of the Indian Trust Act, one partner is an agent or a Trustee for the other partner. Under such circumstances, reading the said provision along with the definition of "legal representative" under the



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Code, any person who represents the estate of the deceased is a legal representative.

11. Therefore, the surviving partners already being on record, they represent the estate of the deceased partners and consequently, the question of taking steps for bringing on record their legal heirs does not arise. Once the legal representative represents the estate, that itself would be sufficient for the disposal of the appeal.

12. Consequently, the Civil Revision Petition is dismissed. The Lower Appellate Court is requested to take up A.S.No.3 of 2013 and dispose of the same within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes / No

Speaking Order : Yes / No

Neutral Citation: Yes / No

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To

The learned Additional District Judge,
Vellore.



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V.LAKSHMINARAYANAN, J.

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