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C.M.P.No.12784 of 2023
in
A.S.No.251 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.06.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.P.No.12784 of 2023

in

A.S.No.251 of 2017

S.Muthusamy (Deceased)

1.M.Chandrakumar

2. M. Saravanakumar

.. Petitioners

Vs.

A.Kuppuraj

.. Respondent

PRAYER : Civil Miscellaneous petition is filed under Order XXII Rule 3 read with Section 151 of the Code of Civil Procedure, prayed to bring on record the petitioners herein as Legal representatives of the deceased sole appellant and rank them as appellant 3 and 3 in the above appeal.

For Appellants : Mr.K.M.C.Arunmogan

For Respondent : Mr.S.Natana Rajan



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ORDER

This petition has been filed to bring on record the petitioners herein as Legal representatives of the deceased sole appellant and rank them as appellant 3 and 3 in the above appeal.

2. The learned counsel for the petitioners submitted that, originally the suit in O.S.No.96 of 2013 has been filed by the respondent herein before the learned I Additional District and Sessions Judge, Tirupur, for specific performance of an Agreement for sale dated 10.08.2011 bearing Doc.No.3556 of 2011 and Deed of Extension of an Agreement for Sale dated 01.08.2012 bearing Doc.No.3065 of 2012 and execute the sale deed in favour of the Respondent herein or in alternative directing the appellant herein to pay a sum of Rs.12,00,000/- (Rupees Twelve Lakh Only) along with subsequent interest. On hearing both sides the learned Trial Judge directed the appellant to pay a sum of Rs.10,00,000/- (Rupees Ten Lakh only) along with interest at 9 % p.a. from the date of agreement till the date of plaint and 6% p.a. from the date of plaint till the date of realization.



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3. Aggrieved by the same the appellant had preferred the First Appeal in A.S.No.251 of 2017 before this Court. At the time of filing of the First Appeal, the appellant had paid an amount of Rs.1,04,100/- (Rupees One Lakh Four Thousand and One Hundred Only) as Court Fee. During the pendency of the appeal, the appellant died on 03.07.2019, leaving behind his wife and 2 sons. While this being so, the dispute pertaining to the present Appeal was settled out of Court through Mediation Centre. Further, when the matter was listed before this Court, the counsel for the respondent had brought to notice of this Court that the dispute was settled through Mediation. Accordingly, this Court closed the above Appeal by an order dated 07.01.2020. Further, this Court had held that the appellant is entitled to refund of Court Fees paid. It is stated that on 07.04.2021 the appellant's wife passed away, leaving behind their 2 sons. Hence, as on date the petitioners 1 and 2 are the legal heirs of the appellant / S.Muthusamy (Deceased). Further, they are entitled to refund of the the Court Fees paid in the above appeal on his behalf. Further it is stated that the 1st petitioner herein was also diagnosed with hypodensity in left frontal, parietal and temporal region causing exvacuo dilation of left lateral ventricle. Thereby, they are unable to immediately



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approach this Court seeking for refund of Court Fees paid in the above appeal.

4. Heard the learned counsel for the petitioners and learned counsel for the respondent and perused the materials available on record.

5. On appreciation of the above facts, that the matter has already been settled out of Court through Mediation and the amount was also received by the respondent. However, for refund of the Court fee, the legal heirs of the deceased /appellant have to be impleaded.

6. After, the matter was settled before the Mediation and based on the Mediation report the Appeal Suit A.S.No.251 of 2017 was closed. Accordingly the appellant is entitled for the Court fee. Now the appellant's wife died on 07.04.2021 and the petitioners herein are legal representatives of the deceased sole appellant and they are entitled to get the refund of the Court fee.



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7. No objection has been raised on the side of the respondent.

8. Having, satisfied with the averments stated in the affidavit filed in support of this petition and also considering the submissions made, this petition is allowed.

9. Registry is directed to carry out the necessary amendment in the Appeal Suit.

28.06.2023

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Index : Yes/No

Speaking Order: Yes/No



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