



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.2353 of 2022

and

C.M.P.No.12128 of 2022

1.Chinnasamy
2.Thangannan
3.Ramasamy
4.Ramamoorthy

... Petitioners

Vs.

Ponni Charitable Trust,
a Society registered under the Societies
Registration Act,
Represented by it's President M.Subramaniam(Died),72
Having it's office at Samalapuram Post,
Tiruppur District,
Literacy Mission International School,
at Sular Main Road, Sular Post,
Coimbatore – 641 402.

1.Ponni Charitable Trust,
a Society registered under the Societies
Registration Act,
Represented by it's President G.Rathinasabapathy,54
Having it's office at Samalapuram Post,
Tiruppur District,
Literacy Mission International School,
at Sular Main Road, Sular Post,
Coimbatore – 641 402.

... Respondent



Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set-aside the order dated 01.06.2022 in I.A.No.726 of 2021 in O.S.No.52 of 2019 on the file of Principal District Judge, Tiruppur.

For Petitioners : Mr.T.Mohan
Senior Counsel
For Mr.K.Sudhakar

For Respondent : Mr.S.Arjun

ORDER

The Civil Revision Petition has been filed against the order dated 01.06.2022 in I.A.No.726 of 2021 in O.S.No.52 of 2019 on the file of Principal District Judge, Tiruppur.

2. The revision petitioners are the defendants in the suit and the respondent / Ponni Charitable Trust, a Society registered under the Societies Registration Act, represented by its President Mr.M.Subramaniam (died), instituted a suit for injunction. Two other Suits are pending between the parties in O.S.No.300/2019 and O.S.No.454 of 2020. The suit in O.S.No.454 of 2020 is filed for Declaration and Injunction. It is not in dispute that the Former President Mr.M.Subramaniam, who died, is to be substituted with the new elected President for the purpose of representing the Trust. In this



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regard, the respondent filed an Interlocutory Application in I.A.No.726 of 2021 in O.S.No.52 of 2019 to implead Mr.G.Rathinasabapathy, who is the elected President after the death of Mr.M.Subramaniam. The Interlocutory Application filed by the respondent herein was allowed by the trial Court on the ground that he is a necessary party to represent the Trust, since he was elected in the General Body Meeting.

3. The learned Senior counsel appearing on behalf of the revision petitioners state that substitution is to be made after adjudication of issues under Order 22 Rule 5 and determining the question as to the legal representative. Thus, the order of the trial Court, allowing the impleading petition is not in consonance with the procedures as contemplated under the Code of Civil Procedure.

4. Order 22 Rule 5 of C.P.C., stipulates “Determination of question as to legal representative”. Accordingly, where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court.



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5. However, in the present case, it is not the death of a party, since the plaintiff in the case is Ponni Charitable Trust and the deceased Mr.M.Subramaniam is only representing the Trust as a President and his death cannot be construed as if the death of the plaintiff himself.

6. Plaintiff is a legal entity. Trust is a society, registered under the Societies Registration Act and a legal entity. The person, representing the society alone died and therefore, the substitution or impleading is necessary.

7. There is a dispute that the said Charitable Trust is registered under the Trust Act. However, those disputes are unconnected in respect of the impleadment of the representative of the Trust on account of the death of Erstwhile President Mr.M.Subramaniam. The plaintiff institution cannot be left unrepresented by the duly elected person and therefore, the Interlocutory Application filed by the respondent is in consonance with the procedures contemplated and in the place of deceased Mr.M.Subramaniam, who was the President of the plaintiff Trust, the name of the newly representative of the Trust Mr.G.Rathinasabapathy was substituted for the purpose of representing the plaintiff Trust and therefore Mr.G.Rathinasabapathy himself is not a



plaintiff, since the institution is the plaintiff in the suit.

8. That being the factum, objections raised on behalf of the revision petitioners deserve no merit consideration and the parties are at liberty to adjudicate the issues on merits and in accordance with law.

9. With this liberty, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

02.02.2023

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Index : Yes
Speaking order
Neutral Citation : Yes

To

The Principal District Judge,
Tiruppur.

S.M.SUBRAMANIAM, J.

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