



C.R.P.(PD)No.3042 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

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- 1.Chellammal
- 2.Muthukrishnan
- 3.Rajeswari
- 4.Veerasamy @ Chinnathambi
- 5.Subramani

.. Petitioners

Vs.

- 1.Meenakshi
- 2.Parameswari
- 3.L.Baskar
- 4.Bhavani
- 5.Dakshayani
- 6.V.Perumal
- 7.Narasimman

.. Respondents



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PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 20.02.2019 in I.A.No.1 of 2019 in O.S.No.4063 of 2014 on the file of IV Additional Judge, City Civil Court, Chennai.

For Petitioners : Mr.K.V.Sundararajan

For RR1, 2, 4 to 7 : Ms.Sarvalogasundari
for M/s.Majestic Law Firms

For R3 : No appearance

ORDER

The revision arises against an order dated 20.02.2019 in I.A.No.1 of 2019 in O.S.No.4063 of 2014 on the file of IV Additional Judge, City Civil Court, Chennai.

2. Mr.K.V.Sundararajan, learned counsel appearing for the petitioners brings to my notice that the 2nd petitioner Muthukrishnan passed away on 19.08.2021. His legal heir Chellammal is already on record as the 1st petitioner and therefore, the question of abatement does



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not arise. Chellammal is recognised as the legal heir of the deceased 2nd petitioner Muthukrishnan.

3. Ms.Sarvalogasundari, learned counsel appearing for the respondents 1 to 5 in this revision/plaintiffs in the suit would state that the 1st plaintiff Meenakshi passed away on 28.04.2023. Her legal heirs are already on record as the respondents 2 to 5. Hence, the respondents 2 to 5 are recognised as the legal heirs of the deceased Meenakshi.

4. Insofar as Mr.V.Perumal, 6th respondent is concerned, it is stated that summons were served. He was set exparte before the trial Court on 17.10.2014. He is the 7th defendant in the suit, who has not put his defence. Therefore, invoking the power under Order XXII Rule 4(4) of CPC, there is no necessity to bring the legal representatives of a person, who has remained exparte.



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5. One Arayee Ammal had three children namely, Srinivasan, Meenakshi and Perumal. Arayee Ammal passed away, which brought forth her legal heirs before the Court. Meenakshi along with her children filed O.S.No.4063 of 2014 for partition and separate possession. Her second son Perumal remained exparte. A written statement came to be filed on behalf of Srinivasan and issues were framed. Pending the partition suit, the defendants who were the legal heirs of Srinivasan came to know that Arayee Ammal had left behind a WILL dated 11.11.1993 registered under document No.223 of 1993 bequeathing the suit schedule mentioned property in favour of Srinivasan. Therefore, they initiated proceedings to obtain probate of the WILL in O.P. No.222 of 2018.

6. I am informed that the said O.P. has now been converted into a Testamentary Original Suit bearing T.O.S.No.2 of 2022. On numbering of O.P., an application was filed in the suit stating that the proceedings in O.S.No.4063 of 2014 be kept in abeyance, pending the disposal of the application filed under Clause 13 of the Letters Patent to transfer the



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partition suit from the file of the City Civil Court, Chennai, to the file of this Court. In the meantime, the learned Judge took up the matter for evidence and the matter suffered a few adjournments. On 29.01.2019, the matter was listed for cross examination of P.W.1. Since P.W.1 was not cross-examined in full, the evidence was closed on 29.01.2019. An application was filed in I.A.No.1 of 2019 to reopen the evidence of P.W.1 and to recall P.W.1 for further cross-examination.

7. Immediately, thereafter, the learned trial Judge proceeded to close the evidence of D.W.1 and listed the matter for arguments. In other words, there is absolutely no evidence before the Court on behalf of the defendants. Be that as it may, I.A.No.1 of 2019 was taken up 'for orders' and it was dismissed by an order dated 20.02.2019, against which the present revision.



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8. Heard Mr.K.V.Sundararajan, learned counsel for the petitioners and Ms.Sarvalogasundari for M/s.Majestice Law Firms, learned counsel for the respondents 1, 2 and 4 to 7. I have carefully gone through the records.

9. A perusal of the narration stated above would show that the Court did not await for the proceedings pending before this Court especially, the application for stay in O.P.No.222 of 2018 as well as for order of transfer under Clause 13 of the Letters Patent. It is true that the matter had suffered adjournments, but the learned Judge could have awaited for order of this Court on the transfer petition. The transfer was not based on any allegations etc., but on the ground, the Testamentary Original Suit has to be tried along with the partition suit. For the mistake of the party in not cross-examining P.W.1, they need not have been visited with such a harsh penalty of closing the evidence on 23.01.2019 as well as closing their evidence on 29.01.2019. The Court could have imposed severe conditions on the parties and could have permitted reopening of the evidence.



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10. The purpose of the Code of Civil Procedure is for normal conduct of the suit and not a cane to beat the litigants with. To close the evidence of the parties to cross examine as well as to let in evidence is a very harsh step.

11. Therefore, taking into consideration that the suit now has been transferred to this Court and renumbered as C.S.No.364 of 2019 and the fact that O.P.No.222 of 2018 has been renumbered recently as TOS.No.2 of 2022, I am inclined to allow the revision. However, for the hardship that has been caused to the plaintiffs, the same is allowed on the following terms:

(i) I.A.No.1 of 2019 is allowed on condition that the petitioners shall pay to the learned counsel for the respondents/plaintiffs a sum of Rs.5,000/- (Rupees Five thousand only) within a period of three weeks from today i.e., on or before 19.09.2023.



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(ii) On such payment, I.A.No.1 of 2019 will stand allowed.

(iii) In case, the cost is not paid, the Civil Revision Petition will stand dismissed.

12. The Civil Revision Petition stands allowed on the above terms.

No costs.

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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To

IV Additional Judge, City Civil Court, Chennai.



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V.LAKSHMINARAYANAN,J.

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