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C.R.P. No. 3609 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 3609 of 2023

and

C.M.P.No. 21143 of 2023

P.Senthil Kumar (died)

1. Neeladevi,
W/o. late P.Senthilkumar
2. Deivathal,
M/o. late P.Senthilkumar
3. Minor Sarvesh,
S/o. late P.Senthilkumar
rep. by his mother and natural
guardian Mrs.P.Neelaevi
4. Naren Karthik,
S/o. late P.Senthilkumar

... Petitioners

Versus

1. K.P.Govindasamy,
S/o. Palanisamy Gounder
2. M.Muthukumar,
S/o. Marappan

... Respondents



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PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the fair and decreetal order of II Addl. District and Sessions Judge's court at Tiruppur, dated 02.06.2023 in I.A.No.444 of 2017 in O.S.No. 459 of 2009.

For Petitioner : Mr.P.Valliappan,
Senior Advocate for
M/s. PV Law Associates

ORDER

Challenging the impugned order passed in I.A.No. 444 of 2017 in O.S.No.459 of 2009 by the learned II Addl. District and Sessions Judge, Tiruppur, the proposed respondents 3 to 6/third parties preferred the present Civil Revision Petition.

2. Since the relief is claimed against the trial judge, notice to the respondents is dispensed with.

3. The learned counsel for Revision Petitioners would submit that originally, a suit in O.S.No. 459 of 2009 was filed by the 1st respondent/plaintiff for the relief of specific performance. Subsequently, one P.Senthilkumar was impleaded as 2nd defendant in the suit, which was challenged by the legal heirs of 2nd defendant Senthilkumar, who died on 16.01.2019 by way of filing a Civil Revision Petition in C.R.P.No.1201 of



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2017 against the plaintiff before this court and the same was dismissed confirming the findings of the trial judge by impleading the said Senthilkumar as 2nd defendant in the suit. Thereafter, the plaintiff filed an Interlocutory Application in I.A.No. 444 of 2017 seeking to amend the plaint without impleading the legal heirs of deceased Senthilkumar/2nd defendant. But, in fact, the said amendment application was filed after impleading the legal heirs of said Senthilkumar. But, without giving opportunity to the legal heirs of deceased Senthilkumar, the application was allowed by the trial judge, though it was informed to the trial court by submitting a memo that Senthilkumar died on 16.01.2019. In spite of that, the trial judge without giving opportunity to his legal heirs erroneously allowed the said application. Challenging the said findings, now the legal heirs of deceased Senthilkumar preferred this Civil Revision Petition.

4. The learned counsel for Revision Petitioners submitting that having come to know about the death of 2nd defendant Senthilkumar, the trial judge ought to have given opportunity to implead his legal heirs. But without impleading them, the trial judge allowed the amendment application is unjust and erroneous one.



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5. Records perused. About the legal heirs of 2nd defendant was discussed by the trial judge while allowing the application in para 6, erroneously allowed the application without hearing legal heirs of deceased Senthilkumar, however, they are having valid defence in the case. So, on the face of record, the order passed by the trial judge is totally erroneous one and the same is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the trial judge is directed to dispose the said Interlocutory Application No.444 of 2017 by giving opportunity to the legal heirs of deceased Senthilkumar and also directing the 1st respondent/plaintiff to implead legal heirs of deceased Senthilkumar, 2nd defendant. Thereafter, the trial judge is directed to proceed with the amendment application, to complete the trial and dispose the case on merits within a period of three months from the date of receipt of copy of this order. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

II Addl. District Judge, Tiruppur.

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T.V.THAMILSELVI, J.

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