



C.R.P.(PD)No.4083 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.01.2023

CORAM :

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

C.R.P.(PD) No.4083 of 2022
and C.M.P. No.21200 of 2022

Jayammal (deceased)

M.Govindarajan

.. Petitioner

VS

1.M.Vinayagamoorthy

2.The Commissioner,
Tambaram Municipality,
Tambaram, Chennai – 45.

3.The Assistant Engineer,
T.N.E.B., Kadaperi,
Tambaram.

.. Respondents

Petition filed under Article 227 of The Constitution of India
against the order and decreetal order dated 29.08.2022 made in
I.A.No.76 of 2021 in O.S.No.80 of 2005 on the file of the District
Munsif, Tambaram.

For Petitioner : Mr.R.Thiagarajan

For Respondents : Mr.P.Srinivas for R2
No appearance for R1 & R3



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ORDER

1. The Civil Revision Petition on hand has been instituted challenging the fair and decreetal order dated 29.08.2022 passed in I.A.No.76 of 2021 in O.S.No.80 of 2005. The revision petitioners are defendant nos. 1 and 2 in the suit and the first respondent instituted the suit for declaration and for permanent injunction. During the pendency of the suit, the first defendant in the suit Jayammal died. The plaintiff in the suit filed interlocutory application in I.A.No.76 of 2021 under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure to amend the plaint as detailed in the interlocutory application. The said interlocutory application filed in I.A.No.76 of 2021 was allowed by the trial Court and thus the revision petitioners are constrained to move the present petition.

2. The learned counsel appearing on behalf of the revision petitioner mainly contended that the amendment sought for in the plaint is to implead the first respondent / Vinayagamoorthy as the adopted son of (Late) Manickam Pillai, the husband of Jayammal.



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3. The second revision petitioner M.Govindarajan claims that he is also son of (Late) Manickam Pillai and son of Jayammal and thus the amendment sought for in the plaint is not entertainable and the issue regarding the legal heirship is to be determined by the Court under Order XXII Rule 5 of the Code of Civil Procedure.

4. In the above backdrop, the learned counsel for the revision petitioner drew the attention of the Court with reference to the amendment sought for by the plaintiffs in the plaint. The claim set out in the interlocutory application is that the plaintiff as adopted son of the first defendant is entitled to succeed estate of the first defendant for proper and effective adjudication. In this regard, the trial Court failed to conduct the adjudication since the second revision petitioner M.Govindarajan is also claiming himself as legal heir of deceased Jayammal, who is the first defendant in the suit.

5. The finding of the trial Court in the order impugned is that there is no such adjudication under Order XXII Rule 5 of the Code of Civil Procedure so as to determine the legal representative of the deceased first defendant / Jayammal. When there is dispute



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regarding the legal representative, then the Sub-Court is bound to adjudicate the issue at the first instance under Order XXII Rule 5 of the Code of Civil Procedure so as to determine the legal representative for the purpose of adjudication of civil suit.

6. Order XXII Rule 5 of the Code of Civil Procedure clearly stipulates that *"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."*

7. When the dispute is raised with regard to legal representatives then it is necessary to determine the said issue at the first instance for the purpose of proceeding further. However, in the present case, without adjudicating the legal representatives, the interlocutory application filed for amending the plaint was allowed by the trial Court which is not in consonance with the procedure stipulated under the Code of Civil Procedure.

8. In view of the above facts and circumstances, this Court has no hesitation in confirming that the trial Court has committed an error in not determining the correctness of the legal



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representative with reference to the procedures contemplated under Order XXII Rule 5 of the Code of Civil Procedure. Thus, the Civil Revision Petition is to be considered.

9. Accordingly, the fair and decreetal order dated 29.08.2022 passed in I.A.No.76 of 2021 in O.S.No.80 of 2005 is set aside and the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed. The parties are at liberty to file appropriate application for the purpose of determining the legal representative of the deceased defendant for effective adjudication of the civil suit.

03.01.2023

Index : No
Neutral Citation : No
ssm

To

The District Munsif,
Tambaram.



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S.M. SUBRAMANIAM,J.

ssm

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