



WEB COPY



C.R.P(MD).No.845 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.845 of 2023

and

CMP(MD)No.3908 of 2023

1. U.Santhi

2.Mohana Bharathi

3.Ilakkiya

... Petitioners/Respondents 1-3/
Defendants 1-3

Vs.

M.Karippayee Ammal (Died)

1.M.Gurunathan Chettiyar

... 1st Respondent/2nd Petitioner/2nd Plaintiff

2.Muppidathi

3.Murugan

4.Karuppayee Ammal

5.Vijayalakshmi

... Respondents 2-5/Proposed Respondents
4-7/Proposed Defendants 4-7

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the Fair and Decretal order dated 02.08.2022 passed in I.A.No.2 of 2021 in New I.A.No.3 of 2021 in O.S.No. 116 of 2015 on the file of the Additional Sub Judge, Srivilliputhur, and allow the present Civil Revision Petition.

For petitioners : Mr.S.S.Thesigan



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ORDER

This petition has been filed to set aside the Fair and Decretal order dated 02.08.2022 passed in I.A.No.2 of 2021 in New I.A.No.3 of 2021 in O.S.No.116 of 2015 on the file of the Additional Sub Judge, Srivilliputhur.

2.By the impugned order dated 02.08.2022, the Additional Sub Judge, Srivilliputhur has allowed I.A.No.2 of 2021 in New I.A.No.3 of 2021 in O.S.No.116 of 2015 and has thus condone the delay of 344 days for setting aside the abatement caused due to the death of the first plaintiff.

3.The petitioners are the defendants in O.S.No.116 of 2015 before the Additional Sub Court, Srivilliputhur. The first plaintiff died on 12.05.2020 after the break of Covid-19 pandemic.

4.The specific case of the petitioners is that the application for impleading the legal heirs of the deceased first plaintiff under Order 22 Rule 3 of CPC to implead themselves as the legal representatives of the deceased first plaintiff was wrongly allowed by the Trial Court.



5.The learned counsel for the petitioners submit that the order passed by the trial Court is irregular, by allowing the application filed to condone the delay for setting aside the abatement which has been filed with the delay of 344 days. That apart, it is submitted that no legal heir certificate was produced before the Trial Court to verify whether the proposed parties, who filed application, were indeed legal heirs of the deceased first plaintiff.

6.I have considered arguments advanced by the learned counsel for the petitioners.

7.The first plaintiff died on 12.05.2020. The only ground urged before this Court is that the respondents 2 to 5 have been allowed to file an application to implead themselves as proposed defendants without filing petition to set aside the abatement and petition to condone the delay of 344 days in setting aside the abatement. The order passed by the Court does not indicate whether the respondents 2 to 5 who have been impleaded had indeed produced the legal heir certificate to establish that they are entitled to proceed further as legal representatives of deceased first plaintiff. There is no merits in the challenge to the impugned order legal heirs are entitled to represent the interest of the deceased plaintiff or defendant as the case may be.



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8.Considering the fact that the suit is of the year 2015, I am inclined to dismiss the Civil Revision Petition by directing the Trial Court to examine whether any legal heir certificate was filed to substantiate that the parties, who were impleaded as defendants or indeed the legal heirs of the deceased first plaintiff. This may be considered as a preliminary issue at the time of trial.

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

29.03.2023

NCC : Yes/No
Index : Yes/No
Internet:Yes/No
dss

To

- 1.The Additional Sub Judge,
Srivilliputhur.
- 2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

dss

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