



C.R.P.(MD).No.2317 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.2317 of 2018

and

C.M.P(MD) No.10361 of 2018

Ganapathiya Pillai (died)
Subbulakshmi

... Revision Petitioner/Legal
Representative of deceased
Defendant

Abdul Ali

-vs-

... Respondent/Petitioner/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 28.06.2018 passed in I.A.No.91 of 2018 in O.S.No.104 of 2004 on the file of the II Additional District Munsif Court (FAC), Tirunelveli.

For Petitioner : Mr.S.A.Ganapathyraman

For Respondent : Mr.S.Srinivasa Raghavan



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ORDER

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The present Civil Revision Petition has been filed by the petitioner under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 28.06.2018 passed in I.A.No.91 of 2018 in O.S.No.104 of 2004 on the file of the II Additional District Munsif Court (FAC), Tirunelveli.

2. The revision petitioner herein is the legal heir of the sole defendant and the respondent herein is the plaintiff before the trial Court.

3. The short facts which give rise to the instant Civil Revision Petition are that the plaintiff who is the respondent herein has filed suit in O.S.No.104 of 2004 on the file of the II Additional District Munsif Court (FAC), Tirunelveli, for the relief of recovery of possession and for damages.

4. It appears that when the suit was pending, the sole defendant died on 02.10.2014. The learned counsel for the petitioner would also submit that he intimated about the death of the sole defendant, vide a Memo dated 17.12.2014 and the plaintiff has received the Memo on 18.12.2014. However, he has filed an application under Order 22 Rule 4 of C.P.C., only on



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12.03.2018 and while filing the application to implead the legal heir, who is the revision petitioner herein has not filed an application to set aside the abatement and also to condone the delay in filing the set aside abatement application.

5. The learned counsel for the petitioner further submit that the very order passed by the learned trial Judge allowing the application so as to implead the revision petitioner as party to the suit is illegal. Hence, he prayed to allow this Civil Revision Petition.

6. Per contra, the learned counsel appearing for the respondent would submit that the very order of the learned trial Judge in allowing the application cannot be interfered with as there are so many precedents to the effect that while considering the application for impleadment of legal representative, the Court should not take hyper-technical approach.

7. This Court has given anxious consideration to the submissions of the learned counsel on either side.



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8. It is not disputed on the either side about the death of the sole defendant on 02.10.2014 and the Memo filed by the learned counsel for the sole defendant on 17.12.2014 and also the filing of an application for impleadment of revision petitioner in the place of the sole defendant on 12.03.2018. It is also an admitted fact that no applications were filed for condonation of delay in filing the application to set aside the abatement application and also non-filing application of setting aside the abatement.

9. As per the precedents, reported in **2004(5) CTC 365 (K.Rudrappa Vs. Shivappa)**, the apex Court held that, while impleading the legal heirs, the Court should not adopt too hyper-technical view. In view of the background of the case, the learned trial Judge has gone into all the aspects and rightly allowed the impleading applications. This Court could not find any infirmity in passing the order of the learned trial Judge. Hence, this Court is not inclined to allow the revision petition.

10. In the result, the Civil Revision Petition stands **dismissed**. Considering the fact that the suit is of the year 2004, the learned trial Judge is directed to dispose of O.S.No.104 of 2004 as expeditiously as possible



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preferably within a period of six months from the date of receipt of the copy of this order and both the parties are directed to cooperate with the trial.

There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

18.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The II Additional District Munsif Court (FAC),
Tirunelveli.



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C.KUMARAPPAN,J.

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