



C.R.P.P.D.(MD)No.2340 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.R.P.P.D.(MD)No.2340 of 2018 &
C.M.P.(MD)No.10397 of 2018

Virudhunagar Arulmigu Karukuvallaiyan
Banthi Madasamy Kovil Samikumbidum
Pangalikalukagavum for himself
Through its Temple Poosari N.Ravi
S/o.Nataraja Nadar
No.16, Punugu Asari Street, Therkuvasal,
Madurai - 625 001, Madurai District.

... Petitioner

Vs

1.N.Pandeeswaran
2.N.Pappathi
3.G.Thangarajan
4.S.Arumugam
5.G.Marimuthu

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India to call for the Order and Decretal Order dated 18.04.2018 in I.A.No.931 of 2017 in O.S.No.192 of 2013 on the file of the Principal District Munsif Court, Virudhunagar and set aside the same and thereby allow the present Civil Revision Petition.

For Petitioner : Mr.T.Pon Ramkumar

For Respondents : Mrs.P.Jessi Jeeva Priya for R3
No appearance for R1, R2, R4, R5



C.R.P.P.D.(MD)No.2340 of 2018

ORDER

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The revision petitioner as a third party sought to implead himself in the suit by taking out I.A.No.931 of 2017 under Order XXII Rule 10 of CPC. The said application was resisted by the defendants and the Trial Court also dismissed the said application finding that the cause of action was personal to the deceased P.Manohar and therefore, the cause of action does not survive. The said order is challenged by the petitioner on the ground that in a suit filed under Order I Rule 8 of CPC, the said application ought to have been entertained and the Trial Court ought not have dismissed the application holding that the cause of action was personal.

2. The learned counsel appearing for the revision petitioner would submit that he is only seeking to substitute himself on behalf of the deceased P.Manohar, who was representing the plaintiff and prosecuting the suit and therefore, there was no personal interest of the said P.Manohar involved in the suit and the Trial Court erroneously held that the cause of action of the suit was personal in nature to the said P.Manohar and dismissed the application.



C.R.P.P.D.(MD)No.2340 of 2018

3. Per contra, the learned counsel appearing for the third respondent would submit that the present revision petitioner N.Ravi has not established his interest in the plaintiff and no justifiable reasons or grounds are stated in the affidavit filed in support of the application as to how he is authorised or competent to prosecute the suit. The learned counsel would also state that the very status of Mr.P.Manohar itself was under challenge and a detailed written statement has been filed in this regard and in such circumstances, the application was rightly dismissed by the Trial Court.

4. Heard the learned counsel for the petitioner, the learned counsel for the third respondent and perused the records.

5. The admitted facts are that the suit has been filed in a representative capacity invoking Order I Rule 8 of CPC. In a suit of this nature being filed in representative capacity, the question of impleading the legal representatives does not arise. The application, was therefore, rightly taken under Order XXII Rule 10 of CPC, in view of the demise of P.Manohar, who prosecuted the suit on behalf of the plaintiff in representative capacity.



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6. Order XXII Rule 10 runs thus.

"Procedure in case of assignment before final order in suit.-

(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule. (1)."

7. Pursuant to the demise of P.Manohar, the revision petitioner has rightly approached this Court and sought the leave of the Court to continue the suit. Considering the fact that the suit has been filed in representative capacity after obtaining leave under Order I Rule 8 of CPC, the Trial Court ought not have dismissed the I.A.No.931 of 2017. In fact, the dismissal of the said application goes against the very letter and spirit of Order 1 Rule 8 of CPC. Be that as it may, it is always open to the respondents / defendants to establish their contentions at trial, including the very authority of the revision petitioner



C.R.P.P.D.(MD)No.2340 of 2018

to represent the plaintiff and prosecute the suit in a representative capacity,
besides all other contentions already taken in the written statement.

8. In the result, the Civil Revision Petition is allowed. The order in I.A.No.931 of 2017 in O.S.No.192 of 2013 is set aside. No costs. Consequently, the connected Miscellaneous Petition is closed. Considering the fact that the suit is of the year 2013, the Trial Court shall endeavour to dispose the suit within a period of nine months from the date of receipt of a copy of this order.

30.11.2023

NCC : Yes / No
Index : Yes / No
Speaking / Non-speaking order

mbi

To

The Principal District Munsif,
Virudhunagar



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C.R.P.P.D.(MD)No.2340 of 2018

P.B.BALAJI, J.

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C.R.P.P.D.(MD)No.2340 of 2018

30.11.2023