



CRP.(MD)No.805 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.07.2023

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

CRP.(MD)No.805 of 2017
and
CMP.(MD)No.3620 of 2017

1.Vanarani

2.Petchiammal

... Petitioners

Vs.

1.S.Selvi

2.M.Subbiah

Ponnusamy(died)

3.M.Maharajan

4.M.Eswaran

5.A.Muthiah

M.Sannasi(died)

6.P.Meenakshi

7.P.Sumathy

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8.P.Manmadhan

... Respondents

(R2 to R8 set exparte in the lower Court hence notice not necessary as given up)

PRAYER : Civil Revision Case filed under Section 115 of CPC., to set aside the fair order and executable order dated 06.01.2017 made in I.A.No.104 of 2016 in I.A.No.492 of 2015 in I.A.No.353 of 2014 in O.S.No.104 of 2012 on the file of the District Munsif, Theni.

For Petitioners : Mr.R.Surya Narayanan

For R1 : Mr.S.Muniyandi

R2 to R8 given up

ORDER

This civil revision petition has been filed as against the fair and final order passed by the trial Court in I.A.No.104 of 2016 in I.A.No.492 of 2015 in I.A.No.353 of 2014 in O.S.No.104 of 2012, which was filed under Order 22 Rule 4 of the Civil Procedure Code.

2.According to the petitioners, the third defendant one Ponnusamy died and in order to implead his legal heirs in the suit, he filed an

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application under Order 22 Rule 4. While filing the said application, the petitioners have not filed application to set aside the abatement and also to condone delay in filing set aside abatement application. The respondent herein has raised objection in this regard in their counter statement and prayed for dismissal of this petition.

3.The learned trial Judge considered the ground raised by the respondent herein and has dismissed the impleading application by stating that when the petitioners came to know the death of Ponnusamy on 26.04.2015, the impleading application should have been filed within a period stipulated under the Limitation Act. Whereas, there was huge delay. In the meantime, the petition against Late.Ponnusamy got abated.

4.Before this Court, the learned counsel appearing for the petitioners submitted that the approach of the learned trial Judge is hyper-technical and that the very dismissal of the application is not in-consonance with settled legal principle. In support of his contention, he relied upon the decision of this Court reported in **2015-3-L.W.273** in a case of ***C.Mathuram & others Vs. Technical Staff Housing Society***



represented by its Secretary & others. Wherein this Court by following the judgment of the Hon'ble Supreme Court of India reported in **2005-1-L.W.812 2004 (12) SCC 253** in a case of **K.Rudrappa Vs. Shivappa**, has held that while considering the application for impleading legal heirs, the trial Court could not have adopted hyper-technical approach by rejecting the impleading application, on the simple ground that there was no application filed to condone delay and set aside abatement. The relevant portions of the judgment is as follows:

25.In the decision reported in (2004) 12 SCC 253 [K.Rudrappa vs. Shivappa], the Hon' ble Apex court has taken the view that in considering the application for bringing the legal representatives on record that the court shall not adopt hyper technical view and reject it on the ground that no prayer to set aside the abatement and there is no prayer for condonation of delay. The same view was followed by the High Court of Madhya Pradesh in the judgment reported in AIR 2007 MP 223.

26.In the decision reported in (2008)8 SCC 321 [Perumon Bhagvathy Devaswom, Perinadu Village vs. Bhargavi Amma (Dead) by Lrs and others, the Hon'ble Apex Court has observed that as prescribed by Rule 10-A of Order 22 CPC, a duty is casted on the counsel for the respondent to inform the court about the death of such



respondent whenever he comes to know about it. Despite the death is reported and recorded in the order-sheet/proceedings, if the appellant pleads ignorance that may be an indication of negligence or want of diligence.

27.In the light of the decisions of the Hon'ble Apex Court as well as the other High Court, the application of the petitioners cannot be rejected on the sole ground that there is no separate application for setting aside the abatement and for condonation of delay in setting abatement. Further, in the judgment reported in 1971(1) SCC 460 in the case of Ramdass and another vs. Dy. Director of Consolidation and others, the Hon'ble Apex Court has categorically observed that when two legal heirs of the deceased were already on record, the name of the 3rd legal representative could be certainly brought on record and the case cannot be dismissed as abated, for not having been impleaded the other legal heirs in time.

5.Even in the case in the hand, the petitioners filed application to implead the legal heirs, however, no application filed to condone the delay and to set aside abatement. But the trial Court rejected the impleading application on the above ground. Therefore, the petitioners filed the present petition.



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6.This Court finds that the very dismissal of the application is not in-consonance with the above precedent. Hence, the same is liable to be interfered with and therefore, the order passed by the trial Court is ordered to be set aside by allowing this civil revision petition. Thus the application in I.A.No.104 of 2016 in I.A.No.492 of 2015 in I.A.No.353 of 2014 in O.S.No.104 of 2012 is allowed. No costs. Consequently, connected miscellaneous petition is closed.

7.At this juncture, the learned counsel appearing for the respondent seeks the indulgence of this Court for direction to the trial Court for early disposal of the final decree application. Considering the request and also considering the long pendency of the matter, the learned District Munsif, Theni is directed to dispose the final decree proceedings, as expeditiously as possible.

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NCC : Yes / No
Index : Yes / No
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To



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1.The District Munsif,
Theni.

2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.

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