



C.R.P(MD)No.969 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.10.2023**

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.R.P(MD)No.969 of 2017
and
C.M.P(MD)No.4294 of 2017

1.Ananthavalli
2.Sundarrajan
3.Muthumeena
4.Vijayasamoondeeswari :Petitioners/Respondents 10 to 13/
Defendants 10 to 13

.VS.

1.Muthupandi
2.Guruvammal @ Guruselvi : Respondents 1 & 2/Petitioners/
Plaintiffs
3.Kannan
4.Karuppiah
5.Maheswari
6.Arunkumar
7.Sudha
8.Murugan
9.Balaguru
10.Krishnan
Chellammal (Died)
11.Mala
12.Tmt.Rani
13.Tmt.Latha
14.Meenakshi
15.Sowmiyaprasath
16.Indirani
17.Mallika
18.Nagajothi
19.Vijayalakshmi
20.Thaneswari



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21.Meenakshi
22.Sundarathai
23.Velupillai
24.M.V.Ravi
25.Ramalakshmi

...Respondents/Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 29.11.2016 passed in I.A.No.878 of 2015 in O.S.No.111 of 2010 on the file of VI Additional District Court, Madurai.

For Petitioners	:Mrs.K.R.Shivashankari
For R1	:Mr.Arjun for Mr.N.Vallinayagam
For R2 to R15	: No appearance
For R16 to R25	: Dispensed with

ORDER

This Civil Revision Petition is at the instance of the defendants 10 to 13, aggrieved by the order of the trial Court allowing the I.A.No.878 of 2015 which was filed to implead the respondents 16 to 25 as legal representatives of the deceased 9th defendant.

2. According to the plaintiffs, the proposed parties are the legal representatives of the deceased 9th defendant and they are proper as well as necessary parties to adjudicate the relief prayed



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for in the suit, namely, declaration and permanent injunction.

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3. Per contra, the learned counsel for the revision petitioners, who represent some of the defendants in the suit, has stated that a detailed counter has been filed, opposing the impleading application, questioning the status of the legal heirs. More over, according to the counsel for the revision petitioners, some of the proposed parties happen to be ladies and they cannot be appointed to the post of Poosari and therefore, viewed from this angle, the application ought not to have been entertained, leave alone having been allowed by the trial Court.

4. Heard the learned counsel appearing for the petitioners as well as the first respondent.

5. Order 22 Rule 5 of the Code of Civil Procedure is extracted for easy reference:-

"5.Determination of question as to legal representative- Where a question arises as to whether any person is or is not the legal representatives of a deceased plaintiff or a deceased defendant, such



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question shall be determined by the Court.

[Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question.]”

6. In this case, the trial Court ought to have applied the mandate of Rule 5 of Order 22 of CPC., and conducted an enquiry and determined whether the proposed parties are the legal representatives of the deceased 9th defendant or not. However, the trial Court has not followed the said mandate set out in the Rule 5 Order 22 of CPC. The trial Court has merely found that the parties are to be impleaded so as to avoid multiplicity of proceedings without going into the specific defence taken in the counter affidavit that the proposed parties are not the legal representatives of the deceased 9th defendant.

7. In such limited view of the matter, I am of the opinion that the matter is to remit back to the trial Court to follow the procedure contemplated under Rule 5 Order 22 of the CPC., before allowing or



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disallowing the I.A.No.878 of 2015. The Civil Revision Petition deserves to be entertained and allowed. Consequently, the Civil Revision Petition is allowed and the order passed in I.A.No.878 of 2015 is set aside and the trial Court is directed to take up I.A.No. 878 of 2015 and determine the question as to legal representatives of the 9th defendant after providing sufficient opportunities to the contesting parties before the trial Court. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

09.10.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
AM

To
The VI Additional District Court, Madurai.



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P.B.BALAJI,J.

am

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