



C.R.P.No.983 of 2024.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.983 of 2024

and

C.M.P.No.5040 of 2024

Sethuraman

... Petitioner

Vs.

1.Selvam

2.Minor Keerthi

3.Minor Karthi

Minors represented by Court Guardian

4.Sivakumar

5.Manivasagam (died)

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decretal orders dated 30.06.2023 passed in I.A.No.2 of 2022 in O.S.No.34 of 2017 on the file of the Additional District Munsif Court, Tittagudi.

For Petitioner

: M/s.T.Sezhian
for M/s.R.Meenal

**ORDER**

WEB COPY

The Civil Revision Petition is filed challenging the order passed by the Trial Court refusing to grant exemption to the petitioner/plaintiff from bringing the legal representatives of the deceased 5th defendant namely Manivasagam on record. The preamble portion of impugned order would indicate respondents 1 to 3 did not object the petitioner's prayer by filing counter. The 4th respondent remained *exparte*. Hence, having regard to the relief prayed for, notice to respondents 1 to 4 is not necessary.

2. The petitioner herein filed a suit for declaration of title and recovery of possession. The 5th defendant was set *exparte* on 01.02.2018. Thereafter, pending suit, the 5th defendant namely Manivasagam died. The petitioner herein filed application in I.A.No.2 of 2022 seeking exemption from bringing the legal representatives of the deceased 5th defendant on record under Order XXII Rule 4(4) of CPC. The said application was dismissed by the Trial Court. Aggrieved by the same, the petitioner is before this Court.



3. The learned counsel for the petitioner by taking this Court to Order XXII Rule 4(4) of CPC submitted that when the 5th defendant failed to file written statement and remained *exparte*, there is no necessity to bring his legal representatives on record and the Court has got ample power to grant exemption to the plaintiff from bringing the legal representatives of 5th defendant on record. In support of his contentions, the learned counsel relied on the judgment of this Court reported in **1998 SCC OnLine Madras 155**.

4. Order XXII Rule 4(4) of Code of Civil Procedure reads as follows:-

“The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place”

5. A reading of above provisions would make it clear that if the defendant in a suit failed to file written statement or failed to appear in the suit dies, the Trial Court may pronounce the judgment against the said defendant



notwithstanding the death of such defendant, provided the Court passed an order exempting the plaintiff from bringing the legal representatives of such defendant, who remained *exparte*. This Court in ***Krishnaveni and four others Vs Ramachandra Naidu and others reported in 1998 SCC OnLine Madras 155***, following earlier Division Bench judgment in ***Janabai Ammal @ Gunabosshani Vs T.A.S.Palani Mudaliar and others reported in AIR 1981 Mad 62*** held as follows:-

“18. From the paragraph extracted above, it is clear that when a judgment is pronounced in a suit against a deceased defendant after according necessary exemption under sub-rule (4), no abatement as such shall be deemed to have taken effect, in as much as the Judgment itself is deemed to have been pronounced during the life-time of the deceased defendant. In other words the moment exemption from substitution of legal representatives of a defendant is granted under Order 22, Rule 4 (4), even if there was an abatement by operation of sub-rule (3) of Order 22, its effect is taken away. This would be the harmonious construction of sub-rule (4) which advance the cause of justice.

19. Exemption can be given by the Court to the plaintiff from the necessity of substituting legal representatives of a deceased defendant subject to the satisfaction of the requirement of the said sub-rule, if the Court thinks it fit to do so, even without an



application filed by the plaintiff. Filing of written application under the said sub-rule for getting exemption from substitution of legal representatives is not mandatory requirement of the said sub-rule”.

6. In view of the law laid down in the above mentioned case laws and also provisions of Order XXII Rule 4(4) of CPC, the plaintiff is entitled to exemption as prayed for. The 5th defendant in the suit failed to file written statement and remained *exparte* and thereafter, he passed away. Therefore, by invoking the above said provisions, the Court is entitled to grant exemption to the plaintiff. In the case on hand, the Trial Court failed to exercise the jurisdiction vested with it under Order XXII Rule 4(4) of CPC and hence, the same is liable to be set aside. Accordingly, the Civil Revision Petition stands allowed. Consequently, the connected miscellaneous petition is closed. No costs.

18.03.2024

Index : Yes / No

Internet : Yes / No

nr

To

The learned Additional District Munsif, Tittagudi.



WEB COPY



C.R.P.No.983 of 2024.

S.SOUNTHAR, J.

nr

C.R.P.No.983 of 2024
and
C.M.P.No.5040 of 2024

18.03.2024