



C.R.P.(PD)No.977 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 08.08.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.977 of 2023

and

C.M.P.No.7244 of 2023

1.Vasanta Mary Peter
Represented by Power of Attorney Agent,
Samuel Asir Raj

2.Samuel Asir Raj

3.Margaret Shanthi Daniel
Represented by Power of Attorney,
Samuel Asir Raj

.. Petitioners

Vs.

1.E.Vamanan

2.V.Kala

3.Chandra Savarimuthu

4.Amirtharaj Savarmithu

5.Nirmala Joseph

.. Respondents



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Prayer : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order passed by the learned Additional District Judge (Fast Track Court), Kancheepuram in I.A.SR.No.3068 of 2023 in O.S.No.19 of 2019 dated 08.03.2023 and consequently direct the learned Additional District Judge (Fast Track Court), Kancheepuram to implead the revision petitioners as plaintiffs in O.S.No.19 of 2019.

For Petitioners : Mr.S.I.Sharukumar

For R1 & R2 : Mr.B.Eswaran
for M/s.Swaraj Associates

For R4 & R5 : Ms.Pavithra Devi
for Ms.D.Nishanthi

R3 : Died

ORDER

On account of an *inter se* dispute between the family members of the original plaintiff, the suit has not proceeded further.

2. O.S.No.19 of 2019 was presented by one Savarimuthu, a person who was extremely advanced in age even at the time of presentation of the



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plaint. He filed a suit for recovery of a sum of Rs.1,50,50,000/- from the defendants.

3. He also approached this Court for a direction for early disposal of the suit, and the said revision was allowed. Unfortunately, after the order was passed, before the suit could be disposed of, the original plaintiff passed away on 04.07.2022. On the death of the original plaintiff, his wife/Chandra Savarimuthu and his daughter/Nirmala Joseph and his son/Amirtharaj filed an application to bring themselves on record as the legal representatives of the deceased plaintiff.

4. Even at the time of filing of application, they disclosed the fact that apart from themselves, there are other legal heirs to the deceased Savarimuthu, namely Lily Ignatius Susheela Deivassagayame, Vasanta Mary Peter, Margaret Shanthi Daniel and Samuel Asir Raj. They were not impleaded as the co-plaintiffs, since they were residing in France, Canada, Australia and Tirunelveli respectively. The application filed under Order XXII Rule 3 of the Code of Civil Procedure came to be allowed by the



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learned Additional District Judge on 23.11.2022.

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5. On coming to know of the pendency of the suit, the other legal heirs of the deceased Savarimuthu, namely Vasanta Mary Peter, Margaret Shanthi Daniel and Samuel Asir Raj filed applications to implead themselves in the said proceeding. As there has been no disputes in the relationship between the parties, the learned Judge took a view that they could be impleaded only as defendants to the suit, and since the substituted plaintiffs objected to the same, he rejected the application. Against which, the present revision has been filed before this Court.

6. Heard Mr.S.I.Sharukumar, appearing on behalf of the petitioners, Mr.B.Eswaran, for M/s.Swaraj Associates, appearing on behalf of the 1st and 2nd respondents and Ms.Pavithra Devi, for Ms.D.Nishanthi, appearing on behalf of the 4th and 5th respondents, and I have gone through the records available.

7. From the narration of the aforesaid facts, it is clear that the civil revision petitioners are also the legal heirs of the deceased original



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plaintiff/Savarimuthu. The substituted plaintiffs, namely the wife, son and the daughter of the said Savarimuthu have, even in their application filed to bring on record the legal representatives, conceded that there are other legal heirs to the deceased Savarimuthu. It was thereafter the application in I.A.No.3 of 2022 came to be allowed. The present petitioners were not impleaded in the said application as they were not readily available at that point of time.

8. Today, they have come on their own accord to get themselves impleaded. The relationship between the parties not being in dispute with the deceased plaintiff, I do not understand how they can be impleaded as defendants. A person is arrayed as a defendant only when a plaintiff has some grievance against him. The present situation is that the plaintiffs seek recovery of money given under an agreement to the defendants. Arraying the present civil revision petitioners who are admittedly the legal heirs of the original plaintiff, as the defendants would only embarrass the trial.

9. At this stage, Ms.Pavithra Devi would refer to the judgment of the Bombay High Court in *Venkatrao A. Pai And Sons Ltd. vs Narayanlal*



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Bansilal And Ors. [AIR 1961 BOM 94] to argue that there cannot be more than one counsel appearing for a party in the suit. A careful perusal of the judgment especially in Paragraph Nos.2 and 3 would show that the learned Judge had reached a conclusion, because the practice in the Original Side of the Bombay High Court adopted the practice of the English Court.

10. In fact, the judgment that is referred to in **Wedderburn v. Wedderburn [(1853) 51 ER 993]**, the Court observes as follows :

"When persons undertake the prosecutions of a suit they must make up their minds whether they will become co-plaintiffs; for if they do, they must act together. I cannot allow one of several plaintiffs to act separately from and inconsistently with the others."

11. Placing reliance upon this view, Ms.Pavithra Devi would submit that the civil revision petitioners have to be impleaded only as the defendants. This judgment is an authority for the proposition that the plaintiffs must act together and in case, they do not do so, the Court has the power to transpose one party, who is acting against the interest of the



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plaintiff, as defendants. It does not require English practice for the said purpose. Order I Rule 10 of the Code of Civil Procedure would suffice.

There is nothing placed on record by Ms.Pavithra Devi that the proposed parties are going to act against the interest of the substituted plaintiffs.

12. On the contrary, it is the specific case of Mr.S.I.Sharukumar that the interest of the proposed parties is also to recover the money that was paid by their father to the original defendants. When there is an identity in the purpose, I do not see how the said judgment is relevant to the facts of this case.

13. Furthermore, at this stage, Ms.Pavithra Devi would submit that the wife/Chandra Savarimuthu passed away on 13.01.2024. Therefore, on her death, though there is no necessity to bring the legal representative when the other legal representatives are already on record, the present petitioners will still be entitled to be arrayed as the legal representatives of the Chandra Savarimuthu.

14. In the light of the above discussion, the order passed by the



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learned Judge in I.A.SR.No.3068 of 2023 in O.S.No.19 of 2019, dated 08.03.2023, is set aside. The revision petitioners will be impleaded as the co-plaintiffs to the suit. The Court shall also record the death of Chandra Savarimuthu, and the substituted plaintiffs as well as the newly impleaded parties are the legal heirs of the deceased 2nd plaintiff.

15. Accordingly, the Civil Revision Petition stands allowed. No costs. The learned Additional District Judge (Fast Track Court) at Kancheepuram is reminded that there is already a direction passed by this Court in C.R.P.(PD)No.2946 of 2021 on 21.12.2021 to hear the matter and dispose of the same within a period of eight months from the date of receipt of a copy of that order.

16. The learned Judge is requested to comply with the direction given by this Court in C.R.P.(PD)No.2946 of 2021, and dispose of the suit as expeditiously as possible, treating the date on which the amended plaint copy is filed, as the date from which the direction will start for disposal.



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Index: Yes/No

Speaking Order : Yes/No

Neutral Citation: Yes/No

V. LAKSHMINARAYANAN, J.

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To

The learned Additional District Judge (Fast Track Court),
Kancheepuram



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