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C.R.P.No.2371 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.2371 of 2024

Baby @ Chitra B ... Petitioner

-Vs-

Bactvatchalou.C. ... Respondent

Prayer : Civil Revision Petition under 151 of Civil Procedure Code to set aside the order of the II Additional District Munsif at Pondicherry dated 16.04.2024 in Unnumbered O.S.No. /2024 (Bearing Filing No.OS/237/2024) and consequently direct the II Additional District Munsif at Pondicherry to register the suit and hear the same on merits.

For Petitioner : Mr.M.Nirmal Kumar

ORDER

The case of the civil revision petitioner / plaintiff is that she is the daughter of one Sagoundala and one Bactvatchalou. She claims that her parents were married on 03.07.1961 at Puducherry and from the wedlock she was born. She would state that her father Bactvatchalou had abandoned her and her mother even when she was a toddler and she was brought up by her mother as a single parent. She would plead that she made attempts to trace the whereabouts of Bactvatchalou, but was



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unsuccessful. Therefore, she brought forth a suit for a declaration that Bactvatchalou is dead. In this suit, she impleaded Bactvatchalou himself as a defendant.

2. Obviously, the suit has been presented against a dead person. If in fact the summons were served on Bactvatchalou, then the suit is not maintainable because it would show that he is alive and not dead. Taking into consideration that the plaintiff has not sought for any specific relief, the learned trial Judge rejected the plaint, against which the present revision.

3. Mr.M.Nirmal Kumar, learned counsel for the petitioner, relying upon the judgment of the **Allahabad High Court in "Raeesa Bano -vs- Tabassum Jahan and Others" (2024) 163 ALR 866**, would submit that a suit seeking for a declaration of civil death of a person who is missing for seven years is very much maintainable in terms of Section 34 of the Specific Relief Act.

4. There cannot be any dispute on this proposition. In terms of the Specific Relief Act, if the legal status of a party or a relationship or any right to a property is denied, the person who is aggrieved by such denial is certainly entitled to maintain a suit. But, the suit should be either for a declaration that she is the legal heir of Bactvatchalou, who has been unheard for more than seven years in terms of Section 108 of the Indian Evidence Act, or for a declaration that she succeeds to the



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estate of the said Bactvatchalou. Having shown Bactvatchalou as a sole defendant to the suit, as pointed out above, the paradox arises. If the Court were to grant a decree, it will be a nullity because it is against a dead person and if the Court were to find Bactvatchalou alive, the decree cannot be granted.

5. Therefore, leaving it open to the plaintiff to present a suit seeking for a declaration of legal heirship or as having succeeded to the estate of the alleged deceased Bactvatchalou, this civil revision petition is dismissed. No costs.

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Index : Yes/No

Neutral Citation : Yes/No

KST

To

The II Additional District Munsif, Pondicherry.



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V. LAKSHMINARAYANAN, J.

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