



C.R.P.(PD).No.2260 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.2260 of 2021
and C.M.P.No.17152 of 2021

Paramasivam

... Petitioner

VS

1.Mariammal

2.Palani

3.Periannan

4.Ramasamy

5.Perumaayee

Paavayee (Died)

6.Kandhayee

7.Vasantha

8.Sreerangan

9.Kandasamy

... Respondents



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Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 15.12.2020 passed by the learned District Munsif, Sankari in I.A.No.1 of 2019 in I.A.No.415 of 2014 in O.S.No.32 of 2008, and consequently allow the said I.A.No.415 of 2014.

For Petitioner : Mr.A.Adhi Chakravarthy
for M/s.L.Poovendra Perumal

For R1 to R3 : Ms.R.A.Monalisha
for M/s.R.Marudhachalamurthy

For R4 to R6, R8
and R9 : No Appearance

For R7 : Exparte

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the application filed by the petitioner seeking to amend the provision of law in I.A.No.415 of 2014.

2. The petitioner herein and respondents 8 and 9 along with petitioner's father Palani filed a suit seeking declaration of title and for injunction.



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Pending suit, the father of the petitioner, who was arrayed as 3rd plaintiff in the suit died. Hence, the petitioner filed an application in I.A.No.415 of 2014 to implead respondents 4 to 7 as legal representatives of deceased Palani along with the petitioner. While filing the LR petition, instead of mentioning the provision of law as Order 22 Rule 3 of the Civil Procedure Code, the petitioner wrongly mentioned it as Order 1 Rule 10 of the Civil Procedure Code. Therefore, in order to amend provision of law, the instant application has been filed seeking to amend the provision of law as Order 22 Rule 3 of the Civil Procedure Code instead of Order 1 Rule 10 of Civil Procedure Code. The said application was unfortunately dismissed by the Trial Court on the ground that petitioner failed to file necessary application to condone the delay in filing LR petition.

3. It is not in dispute that petitioner is one of the sons of deceased Palani and he is already on record as 4th plaintiff in the suit and in such circumstances, there is no abatement of the suit on death of 3rd plaintiff-Palani. They right to sue survive to his legal representatives and one of the legal representative is already on record. Therefore, there is no necessity for



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the petitioner to file an application seeking to condone the delay in filing the petition to set aside the abatement or petition to set aside abatement, due to death of 3rd plaintiff. Since the present application is only to incorporate correct provision of law, there is no impediment for allowing the same.

4. Accordingly, the Civil Revision Petition is allowed by permitting the petitioner to amend the provision of law in I.A.No.415 of 2014.

5. The learned counsel appearing for the respondent vehemently contended that one of the proposed legal representatives sought to be impeaded namely Ramasamy is not at all legal representative of the deceased-Palani. Therefore, the Trial Court is directed to decide the question while considering the application in I.A.No.415 of 2014 on merits. No costs. Consequently, the connected civil miscellaneous petition is closed.

23.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm



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To

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The District Munsif,
Sankari.



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S.SOUNTHAR, J.

dm

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