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C.R.P.No.2322 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.2322 of 2021

Ponnusamy

... Petitioner

Vs.

Pandian (Died)

1.Jayalakshmi

2.Mani

3.Loganathan

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order and decreetal order dated 09.03.2021 made in I.A.No.1 of 2019 in I.A.No.437 of 2018 in O.S.No.149 of 2010 by the District Munsif at Paramathy

For Petitioner : M/s.S.Kanimozhi

For Respondents : R1-died
R2 & R3- M/s.D.M.Senthil Kumar



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ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the application filed by the petitioner for amendment of the petition filed to condone the delay in filing petition to restore the suit.

2. The petitioner herein filed a suit for bare injunction against deceased 1st defendant Pandiyan and the respondents. The said suit was dismissed for default on 05.08.2015. The petitioner filed an application to restore the suit with petition to condone the delay in filing restoration of the petition. Later on, it came to the knowledge of the petitioner that 1st defendant in the suit Pandiyan died. Hence, the instant application for amendment has been filed by the petitioner so as to amend the cause title in the petition to condone the delay in filing restoration application. Now, the petitioner wants to include the word died as against the name of Pandiyan in the cause title of the petition. In the affidavit filed in support of the amendment application, it was stated by the petitioner that the main suit was for bare injunction and therefore, the petitioner did not want to bring on record the legal representatives of the deceased.



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3. The Court below dismissed the amendment application on the ground that the reason assigned by the petitioner was vague and hence, it cannot be allowed. Admittedly, the present suit is filed for bare injunction by the petitioner against deceased Pandiyan and the respondents herein. As far as relief of injunction is concerned, the cause of action against the deceased dies with him and hence, there is no necessity to bring on record the legal representatives of the deceased 1st defendant. If the petitioner is not willing to bring on record the legal representatives of deceased 1st defendant, the Court cannot compel the petitioner to file an application to bring on record the legal representatives of the deceased 1st defendant. In case, the suit is proceeded without bringing on record the legal representatives of the deceased 1st defendant, any decree passed in the suit will not bind the estate of the deceased.

4. The learned counsel for the petitioner also submits that the wife of 1st defendant is already on record as 2nd defendant. In such circumstances, if the petitioner so pleases, it is open to him to file a memo before the Court below for recording 2nd defendant as legal representative of the deceased 1st



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defendant. However, the petitioner cannot be compelled to file an application to bring on record the legal representatives of the deceased 1st defendant when he is not willing to do so. Accordingly, the impugned order passed by the Court below is set aside and the Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes / No
nr

To

The learned District Munsif, Paramathy



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S.SOUNTHAR, J.

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