



C.R.P.(PD)No.3843 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 29.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.3843 of 2024 and
C.M.P.No.19869 of 2024

1.D.Selvi
2.R.Soundarapandian
3.R.Sankar
4.P.Devda
5.R.Arulmozhi
(2 to 5 rep. by their Special Power of
Attorney D.Selvi)

....

Petitioners

(cause title accepted vide court order
dated 10/09/2024 made in CMP.No.
19869 of 2024 in CRP.Sr.99035/2024)

Vs

1.Suseela Ramachandran
2.R.Rajesh
V.Krishnaveniammal (Died)
3.S.Dhanalakshmi
4.A.Santha
5.H.Sudha Lakshmi
6.A.Kumaran
7.A.Karthik
8.V.Kanniappan
9.V.Dhanasekaran (alias) Pavadai
10.P.Sathish

V.Kamalakanni (Died)
V.Malar (died)

<https://www.mhc.tn.gov.in/judis>



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11. K.Karnan

12. J.Venugopal

....

Respondents

(Defendants 3 to 14 are set exparte
in the suit & Defendants 3,12 and 13
are died, and as such, Defendants 3 to
14 are given up)

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal order dated 25.08.2023 made in I.A.No.304 of 2022 in O.S.No.55 of 2020 on the file of the Court of the District Munsif-Cum-Judicial Magistrate at Cheyyur and allow the above revision petition.

For Petitioner : Mr. B. Dayalan

For Respondents : Mr. N. Jothi, Senior Counsel
for Mr.S.Vinod
for R1, R2 & R12

ORDER

This Civil Revision Petition arises against the order passed by the learned District Munsif cum Judicial Magistrate, Cheyyur in I.A. No. 304 of 2022 in O.S. No. 55 of 2020 dated 25.08.2023.

2.The civil revision petitioners are the plaintiffs in the suit. O.S.No.55 of 2020 was originally presented before the learned District Munsif at Madurantakam and was numbered as O.S.No. 328 of 2013. Subsequently, on



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account of creation of a Court at Cheyyur, the suit was transferred to the file of

WEB C District Munsif cum Judicial Magistrate, Cheyyur and renumbered as O.S.No.

55 of 2020. In the suit, the plaintiffs seek for the following reliefs:

"(a). For Declaration that the legal heirs of Late.Ganapathy Gramani viz., the plaintiffs 1 to 5 as well as the defendants 3 to 14 are the absolute owners of the suit schedule properties and have got title over the same and for possession of the suit schedule properties from the defendants 1 and 2;

(b). For Declaration that the plaintiffs as well as 5th defendant's mother by name Yasodha, defendants 3,4, the father of the defendants 6 to 8 by name T.G.Angamuthu, mother of the defendants 9,10,12, 13 and grand-mother of the defendant no.11 by name Rukmani and the mother of the 14th defendant by name Chandra are the son and daughters of Late. Ganapathy Gramani and as such the plaintiffs as well as the defendants 3 to 14 are his surviving legal heirs;

(c). For Permanent injunction restraining the defendants 1 and 2, their men and agents from in any manner encumbering or alienating the suit schedule properties;

(d). For Permanent injunction restraining the defendants 1 and 2, their men, agents, servants and others from in manner carrying out land or building developments in the suit schedule properties.

(e). For Declaration that the plaintiffs as well as the defendants 3 to 14 have been having easement rights in respect of the suit properties through and over adjacent lands, comprised in Survey Nos. 328 to 345 and 650 to 700 and its respective sub-division survey numbers of suit village since time immemorial through



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their predecessors-in-title;

(f). For Permanent Injunction restraining the defendants 1 and 2, their men, agents, servants and others from in any manner interfering with the enjoyment of easement rights of the plaintiffs as well as the defendants 3 to 14 and which have been available to the suit properties through and over adjacent lands, comprised in Survey Nos. 328 to 345 and 650 to 700 and its respective sub-division survey numbers of suit village;

(f-1). For declaration that the General Power of Attorney, dated 14.02.2008, (Amended as per order, dated 26.10.2021 made in I.A.No.257 of 2021 in O.S.No.55) registered as document No.85/IV/2008 on the file of S.R.O. Cheyyur as null and void, unenforceable, not binding upon the plaintiffs and the defendants 3 to 14 and vitiated by fraud; (Amended as per order, dated 11.08.2021 made in I.A.No.159 of 2021 in O.S.No.55);

(f-2). For declaration that the Deed of Sale, dated 29.05.2008, registered as document No.2090 of 2008 on the file of S.R.O.Cheyyur as null and void, unenforceable, not binding upon the plaintiffs and the defendants 3 to 14 and vitiated by fraud; (Amended as per order, dated 11.08.2021 made in I.A.No.159 of 2021 in O.S.No.55)

(f-3). For declaration that the Deed of sale, dated 22.07.2008, registered as document No.2953 of 2008 on the file of S.R.O.Cheyyur as null and void, unenforceable, not binding upon the plaintiffs and the defendants 3 to 14 and vitiated by fraud: (Amended as per order, dated 11.08.2021 made in I.A.No.159 of 2021 in O.S.No.55):

3. For the purpose of the disposal of the revision, it is not necessary to

delve deep into the facts of the case. Suffice it to state that pending the suit,



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summons were issued to the defendants 3, 12 and 13. They have been served and had been set *exparte*. When the matter was taken up for further proceedings, the learned counsel appearing for the 1st defendant filed a Memo, bringing it to the notice of the Court that the 3rd defendant, Krishnaveniammal, wife of Vadivel, had passed away on 12.10.2018. He stated that the same was not brought to the notice of the Court by the Plaintiffs. He pointed out that Krishnaveniammal is a close relative of the Plaintiffs. The Memo also stated, one of the daughters of Rukkumani, the 12th Defendant had also died, and therefore, this has to be clarified by the plaintiffs. The Memo added since steps have not been taken for several years, the suit had abated. Along with the Memo, the death certificate of Krishnaveniammal was also filed. It is this Memo, which prevented, the suit from progressing further.

4. On the presentation of the Memo, the plaintiffs filed an application in I.A. No. 304 of 2022 seeking for the permission of the Court to amend the plaint, including the cause title. By virtue of the amendment, they wanted to inform the Court that the defendants 3, 12 and 13 had died and that they had been set *exparte* in the suit, and there was no need to substitute their legal representatives.



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5. This application was strongly opposed by the defendants 1 and 2/respondents 1 and 2 herein. Except for respondents 1 and 2, all the other respondents are relatives of the petitioners. It was asserted by the respondents that the plaintiffs were fully aware of the deaths of Krishnavenniammal and Malar. They alleged that plaintiffs deliberately kept away this information in order to avoid taking necessary steps. As steps have not been taken within the stipulated time, the suit had abated. It was further pleaded that the Court ought to have passed an order exempting the plaintiffs from substituting the legal heirs of the deceased persons, but such a petition had not been filed. The counter conceded that a Memo had been filed to exempt giving notice to the parties. Finally, it was pleaded that mere filing of a petition under Order VI Rule 17 of Code of Civil Procedure, without adding proper legal heirs to include the words 'died' in the cause title, long cause title and pleadings is not maintainable. This is because the plaint avers that the deceased persons are entitled to a share in the suit property. Consequently, the 1st and 2nd defendants sought for dismissal of the petition. Written arguments were filed by the plaintiffs.

6. The learned Judge took up the application for disposal. After perusal of the affidavit, counter and written arguments, the learned Trial Judge



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came to a conclusion that it would be just and appropriate, to take steps to implead the legal heirs of third defendant, twelfth defendant and thirteenth defendant, since the legal heirs ought to have knowledge about the suit. Having come to this conclusion the learned District Munsif proceeded to dismiss the petition, giving liberty to the plaintiffs to implead the legal representatives of the defendants 3, 12 and 13. Hence, this revision.

7. I heard Mr. D. Dayalan for the Civil Revision Petitioners and Mr. N. Jothi, learned Senior Counsel for Mr. S. Vinod for respondents 1, 2 & 12.

8. Mr.D.Dayalan pleads based on the Memo dated 03.09.2022, filed by the defendants 1 and 2, the plaintiffs came to know about the deaths of the defendants 3, 12 and 13. Hence, they filed a petition to amend the plaint. He pleaded the purpose of enacting Order XXII Rule 4 (4) is defeated by the order passed by the Trial Court. He placed strong reliance on the Judgment of the Supreme Court in ***T.Gnanavel and others Vs. T.S.Kanagaraj and others, AIR 2009 SC 2367*** and urged that the order of the Trial Court be set aside and the revision be allowed.

9. Per contra, Mr. N. Jothi, submitted as follows:



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(i) The Petition has been filed by invoking wrong provisions of law under Order VI Rule 17 of Code of Civil Procedure.

(ii) He pointed out that the prayer sought for in the petition itself is wrong and cannot be granted by the Court.

(iii) Relying upon Rule 7 and Form I of Civil Rules of Practice, he argues that cause title is not a pleading and therefore it cannot be amended. To that effect, he invites my attention to Order VI Rule 2 of the Code of Civil Procedure and adds that pleading must contain material facts alone. Since a cause title is not covered by the term "material fact", a party cannot amend the same. Hence, he states that there is no need to indicate the death in the cause title.

(iv) Relying on a Judgment of the Calcutta High Court in ***Nani Gopal Mukherjee vs. Panchanan Mukerjee (1955) 59 CWN 304***, he argues that even if the application under revision is to be treated as one under Order XXII Rule 4 (4) of the C.P.C., the same cannot be ordered, after a suit has abated.

(v) He points out that in order to invoke Order XXII Rule 4(4) of C.P.C., there should be service on a defendant, or after service, the person should have filed a written statement and thereafter kept away from the proceedings of the court. He pleads that since service was not completed on the defendants, the provisions of Order XXII Rule 4 (4) of C.P.C., cannot be taken advantage by



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the plaintiffs.

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(vi) Finally, he argues that by virtue of an amendment to Order XXII Rule 4-A was introduced in the code and that in case there are no legal representatives, the procedure under that provision has to be followed. Resorting to Order XXII Rule 4(4) in this case is not proper.

10. I have carefully considered the submissions of both sides.

11. The first point need not detain me for even for a second. Quoting of wrong provision of law is not fatal so long as the power exists and can be traced to a source available in law. In the facts of this case, the Court has the power to grant exemption under Order XXII Rule 4(4) of the Code. Hence, though the petitioner has quoted Order VI Rule 17. Since, the power is available, the petition will be treated as one filed under Order XXII.

12. Turning to the next issue, I have to point out that Order XXII Rule 4 (4) was brought into the Code of Civil Procedure, by virtue of Act 104 of 1976 with effect from 01.02.1977. Even prior to this amendment, the Madras High Court had amended the Code of Civil Procedure, inserting a similar rule by virtue of P.Dis.4 of 1927. For the sake of comparison, the two provisions are



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extracted hereunder:

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<u>1927 Amendment</u>	<u>1976 Amendment</u>
(4) The Court, whenever it sees fit, may exempt the plaintiff from the necessity to substitute the legal representative of any such defendant who has been declared <i>ex parte</i> or who has failed to file his written statement or who having filed it, has failed to appear and contest at the hearing; and the 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 had been pronounced before death took place.	(4) 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 a 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.



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13. This provision came into force taking into account the recommendation of the Civil Justice Committee in the year 1924. The Madras High Court incorporated it soon after the submission of the report. The entire idea of bringing about the amendment was to ensure that a suit proceeds, without any roadblocks, that might be caused on account of the death of a defendant, who had remained *exparte*. Prior to this rule, the Civil Justice Committee noted that even if the defendant had remained *exparte*, once the matter had been brought to the notice of the court, the suit had to be adjourned to enable filing of application to bring on record that legal representatives. A perusal of both these provisions show that if a party has been served, and he remained absent from the Court without filing a written statement or after having filed the written statement, had failed to appear and contest the suit at the time of hearing, then a court is empowered to exempt the plaintiff from taking steps to bring on record the legal representatives and to pass a Judgment against such a defendant, notwithstanding the death of such defendant. A Judgment so pronounced has the same force and effect, as if it had been pronounced, before the death of the said defendant had taken place.

14. Under Order XXII Rule 4 (4) of C.P.C., the power to exempt a plaintiff, from bringing on record, the legal representatives, can be exercised by



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the Court at any time before the pronouncement of a Judgment.

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15. This position of law has been settled by a Judgment of this court in ***Elisa and others vs. A.Doss AIR 1992 Madras 159***. The Hon'ble Mr. Justice M. Srinivasan, (as his lordship then was) held that for granting exemption, deceased defendant must have remained *exparte* either without filing a written statement, or after filing a written statement. He further held that the language of the rule is clear, that an exemption shall be passed before a Judgment in the case is pronounced.

16. At this point, I have to take note of the submission of Mr. N. Jothi that a suit automatically abates under the 1908 code on the expiry of 90 days from the date of death and therefore, the exemption under Article 120 Order XXII Rule 4 (4) should be sought for within this period. Mr.Jothi is right in his submission that the suit or proceeding abate as the expiry period fixed under Article 120 of the Limitation Act. This is in stark distinction to Section 366 of the Code of 1882, which required an Order to be passed by the Court that the suit has abated. The Judgment of the Divison Bench of Calcutta High Court relied upon by said N. Jothi certainly supports his case. However, I have to point out that the consistent view of this Court, from 1935 onwards seem to



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take a diametrically opposite view.

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17. The first of those Judgments is *Minor Lakshmanan Chettiar and another Vs. Minor Chidambaram Chettiyar, (1935) XLI LW 249:(1935) 68 MLJ 318*. A Division Bench consisting of Curganven and Cornish JJ held that a Court has the power to grant exemption under Order XXII Rule 4 (4), even after the said period has expired. This view had been followed by this Court in *Velappan Pillai Vs. Parappan Panickar and others, AIR 1969 MAD 309*. The learned Judge held that if no application is made for substitution under Order XXII Rule 4 (1) of the C.P.C, and where no order for exemption is sought for under Order XXII Rule 4(4), the suit will abate. Interpreting the words under Order XXII Rule 4(4) “*whenever it sees fit*”, the Court held that the exemption can be granted at any stage of the proceedings. The only condition, being the Court, at the time of granting exemption should ensure that the defendant had either not filed a written statement or having done so, he did not appear to contest at the time of hearing. He further pointed out that, if a person is a proforma defendant, having no interest in the litigation, the rule providing for abatement will not apply. This view found acceptance at the hands of a Division Bench of this Court in *Janabai Ammal Vs. T.A.S. Pazhani Mudaliar, AIR 1981 MAD 62*.



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WEB COPY 18. Since the Calcutta High Court and Madras High Court had taken opposite views, the issue was again presented before Hon'ble Mr. Justice K.S. Lodha in *M/s.Shiv Shankar Rice and General Mills Vs. Mangi Lal, RLW 1984 Raj 60* for resolution. The learned Judge referred to the views taken by the several other High Courts. After taking note of these verdicts, he was of the views that the position of law laid down by this Court, Karnataka High Court, Gauhati High Court, Patna High Court and Allahabad High Court holding that the exemption can be granted any stage, need to be adopted. In fine, he held it is not necessary to file an application within 90 days of the death of a defendant for the purpose of seeking exemption under Order XXII Rule 4 (4) of the C.P.C. As the consistent view of this Court since 1935 has been that an application for exemption can be filed at any time before a Judgment is pronounced, I am not in a position to accept the view taken by *Nani Gopal Mukherjee vs.Panchanan Mukerjee, 1956 1 ILR (cal) 348*.

19. Respectfully following the view of Hon'ble Mr. Justice M. Srinivasan in *Elisa and others vs. A.Doss, AIR 1992 Madras 159*, I hold that there is no necessity for an application to be filed under Order XXII Rule 4 (4) in order to record the exemption for bringing on record the legal representatives for the



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defendants who have remained *exparte*.

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20. I now turn to the next point that has been put up for my answer. According to Mr. Jothi, the *sine qua non* for exercise of power under Order XXII Rule 4 (4) is a service on the defendants. In case, no such service has been effected, then the plaintiff cannot invoke the said provision. On this plea, I am entirely with Mr. Jothi. This is because, under Order XXII Rule 4 (4), unless and until a defendant is served with summons in the suit, he would not be in a position to take a call whether he wants to contest the same. Therefore, in order to invoke Order XXII Rule 4(4), the *sine qua non*, is the defendant should have been served, and he should have opted not to file a written statement, or having filed a written statement, he should have opted not to contest the suit.

21. For the fact that I am agreeing with Mr. Jyoti on law does not mean I have to agree with him on facts also. Mr. Jyoti had raised a plea on an earlier date of hearing that the counsel for the first defendant did not file the Memo dated 03.09.2022 and that summons had not been served on the defendants. Hence, I called for a report from the learned District Munsif on the following aspects:-



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(a) Whether the defendants 3 to 14 in O.S.No.55 of 2020 had been served with summons in the suit and whether they were set exparte?

(b) Whether the counsel for defendants 1 and 2 had filed a memo in court, bringing it to the attention of the court that the 12th defendant had passed away?

22. For the purpose of discussion on this question, the second query can be disposed of first. A copy of the Memo submitted by the learned District Munsif shows that the learned counsel for the 1st Defendant had, in fact, filed a memo. On the first query, the learned District Munsif has submitted a report stating as follows:-

*D 9- summon served; called absent and set **exparte** on 10.01.2014.*

*D 3 and D 11 - summon served; called absent set **exparte** on 07.04.2014.*

*D 10- summon served; called absent and set **exparte** on 14.07.2014.*

*D 13- paper publication effected. Memo filed. D13 called absent Hence set **exparte** on 17.08.2015.*

*D 4 to D8 - sufficient opportunities given. Vakalat of D4 and written statement of D 4 to D 8 not filed. D4 to D8 called absent. Hence D4 to D8 set **exparte** on 29.10.2015.*

*D14 - Postal summon served. D14 called absent and set **exparte** on 04.12.2015.*

D 12- Steps for substitute service not filed. No representation on the side of the plaintiff. Hence suit against D12 is dismissed for default on 09.01.2017.

23. The aforesaid report makes it clear that defendants 3 to 11, 13 and



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14 had been set *ex parte*, after service of summons and that the said suit had been dismissed as against D12.

24. When this was pointed out to Mr. Dayalan, after verification of records, he produced the affidavit and petition dated 03.02.2017, in I.A.No.281 of 2017. By this application, the dismissal of the suit against D 12 was sought to be set aside and also to restore the suit as against the said defendant. It transpires that this application was allowed on 13.04.2017 and paper publication was ordered afresh for the 12th defendant. The certified copy of notes paper produced in the revision points out that, after such restoration, publication was effected on 25.07.2017 and D12 was also set *ex parte* on 15.06.2017. This makes it clear that defendants 3 to 14 have not evinced any interest to contest the suit. None of the defendants have also filed their written statement either. Therefore, the condition precedent for invocation of Order XXII Rule 4 (4) stands satisfied.

25. At this stage, Mr. Jyoti argued that the 12th defendant was set *ex parte* by way of substituted service and therefore, the provisions of Order XXII Rule 4(4) cannot be applied for that defendant.



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26. The Code of Civil procedure contemplates several modes of service, of which substituted service, is one such mode. The learned Trial Judge has been satisfied that publication had been effected and this was treated as sufficient notice on the 12th defendant and had set her *ex parte*. Therefore, it cannot be urged that Order XXII, Rule 4(4) cannot be invoked when a defendant is set *ex parte*. after serving the summons by way of substituted service.

27. I will also look at this issue in another angle. If the Parliament had wanted Order XXII Rule 4 (4) to be invoked only on defendants, who had been personally served and thereafter not participating in proceedings, then they would have mentioned it explicitly in Order XXII. In fact, the word "*ex parte*" is not even used under Order XXII Rule 4 (4). The tests, as pointed out above, is that the defendant, after service, should not have filed a written statement or should have filed a written statement and not proceeded further to contest the suit. That being the situation, if I were to accept to Mr. N.Jothi, I would be judicially amending the Code by including a sentence "defendants personally served and not filing written statement" or "personally served, filed a written statement and not contested thereafter". Such a power is, unfortunately not available to me. Therefore, this submission too is rejected.



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WEB COPY 28. Now, turning to the next point that Order XXII Rule 4A should have been invoked by the defendants, I have to go to the said provision. Under Order XXII Rule 4A, the procedure for a court to proceed, in the absence of a person representing the estate, arises only if the Court comes to a conclusion that the said defendant has no legal representatives. Order XXII Rule 4 (4) and Rule 4A operate on entirely different planes. It is not possible for them to merge. This is for the simple reason, under Order XXII Rule 4 (4), the court exempts a person from substituting the legal representatives of a defendant who does not evince interest in the proceedings. Under Rule 4 A, the defendant must not have any legal representative.

29. For invoking Order XXII Rule 4 (4), the defendant as pointed out above should stay away from the proceedings in the suit, despite service. He should have passed away and should have left behind a legal representative. Only in such a situation, the question of exempting the plaintiff from substituting a legal a representative arises. Rule 4A operates in a plane where there are no legal representatives. If there are no legal representatives, then the question of applying for an exemption to bring the legal representatives on record, does not arise at all.



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WEB COPY 30. Insofar, as the plea that a plaintiff is not entitled to correct the cause title, as it is not a part of the plaint, I have to express that, I am not with the learned Senior Counsel. This is because, while he relies upon Order VI Rule 2 of the Code of Civil Procedure, I have to refer to the next Rule, Order VI Rule 3. Order VI Rule 3 makes it mandatory that every plaint should answer the requirements of Appendix A to the Code. Appendix A, Form (1), which deals with 'TITLES' of the suit. This shows that every suit should have a cause title, which forms part of the plaint.

31. When this was pointed out, Mr. Jothi invited my attention to two judgments rendered by Hon'ble Mr. Justice K. Jagannatha Shetty (as his Lordship then was) in ***Kariyappa & ors Vs. Patel Rudrappa & ors., AIR 1976 KANT 29*** and that of Hon'ble Mr. Justice R.M Lodha in ***Rukmini Dattatraya Vs., Paramanand Lalchand Joshi, 2000 A I HC page 4701***. He relied on these judgments to argue that an amendment in the cause title, is not an amendment in the pleading. Therefore, he states the application filed under Order VI Rule 17 to amend the cause title, is not maintainable.

32. I have to agree with Mr. Jothi that both the learned judges have



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held that an amendment in the cause title is not an amendment of the pleadings.

However, a careful perusal of the judgments shows that they are not applicable to the facts of this case, This is because in both the cases, a party to the proceedings had passed away, and the Plaintiff had taken out an application under Order XXII Rule 4 of the Code to bring the legal representatives on record. The application was allowed. After applications have been allowed, no steps have been taken to correct the cause title in the suits. Therefore, the plaintiffs had filed an application under Order VI Rule 17 to amend the plaint.

33. In the case before Hon'ble Mr. Justice Jagannatha Shetty, the learned Trial Judge had taken a view that the application is belated, and therefore, he dismissed the petition. Similarly, in the case before Hon'ble Mr. Justice R.M.Lodha, the appellate court took a view that as the application to amend the cause title had not been filed in time, it deserved to be dismissed. The view that had been taken by the Subordinate Courts in those cases was that even if an application under Order XXII is allowed, it should be followed with an application under Order VI Rule 17. It was under those circumstances that, the learned Judges came to a conclusion that, once an application is allowed under Order XXII, there is no necessity to file a separate application under Order VI rule 17. This is very clear from the observations made by both



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the learned judges that it is no part of the duty of the litigant, to take steps, to find out if the order for substitution of the names of the legal heirs of the deceased respondents had been carried out in the Court records. Both the learned judges held that the act of correction of cause title, consequent to allowing an application under Order XXII, is only a ministerial act. Once the order under XXII is passed, and if it is not performed or neglected by a party to the suit, then the fault lies with the Court and not with the litigant. Hence, an observation was made that the cause title is not a part of pleadings.

34. A careful perusal of both the Judgments would lead me to the conclusion that once an application for substitution is ordered by the court, then the court should amend the plaint and correct the cause title in order to keep the record up to date. The view taken by the learned Judges cannot be telescoped into a situation, where the plaintiff seeks exemption, to bring on record the legal representatives of the deceased defendant and thereafter correct the cause title.

35. By virtue of allowing an application under Order XXII, the Court brings its records up to date. Though the effect of allowing the application is to amend the array of parties, it is not an amendment *stricto sensu* within the



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meaning of Order VI Rule 17. By resorting to the said provision, the situation gets complicated. This is because, if an order is passed under Order VI Rule 17, and amendment is not carried out within the period fixed by the Court or within the period fixed under Order VI Rule 18, the suit has to proceed as if the amendment had not been granted. However, when an application under Order XXII is allowed, the Court has already granted the requisite permission to amend the cause title. Therefore, Order VI Rule 17 or Order VI Rule 18 will not apply to an application under Order XXII. Though an application is strictly, not necessary to carry out the array of parties, it has been resorted to the practice. The power to carry out such consequential amendment can be traced to Section 151 or Section 153 of the Code of Civil Procedure.

36. This also answers the argument of Mr. N. Jothi that there is no necessity for a Court to show that a person is deceased in the cause title. The answer is that the record of the court has to be up to date. If a deceased person is shown in the cause title as if he is alive, it will give room for mischief. At the time of drafting of the decree also, it will create an issue. It is only a person who is alive is entitled to contest a suit or to file an appeal. Dead persons do not indulge in litigation. Therefore, once an application for substitution is ordered under Order XXII, the record of the court has to be consequently



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brought up to date. Therefore, the necessity to show the status of the party as deceased in the short and long cause title.

37. It is not in dispute in this case that the defendants 3, 12, and 13 have gone to meet their maker. Their presence is no longer required in this temporary abode as well as in the suit. Hence, the plaintiff owes a duty to notify to the Court that they are dead. It is a performance of that duty that the application seems to have been filed.

38. The finding of the learned District Munsif that the legal heirs must know about the pendency of the suit truly intrigues me. The original defendants themselves have not shown any interest in the litigation. When a legal representative is brought on record, he cannot project any new plea in the case. He/she merely represents the estate of the deceased defendant. This is the mandate of Order XXII Rule 4 (2) of the Code. When the deceased himself, when alive, was not interested in contesting the proceedings, a legal representative cannot have a superior right than that which was enjoyed by the deceased defendant. If the view of the learned Trial Judge is to be accepted, then a litigation would never come to an end. A legal representative would attempt to project a new case than that would have been projected by the



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original defendant resulting in the plaintiff contesting a suit on a totality. Order

XXII Rule 4(2) prevents such a new plea. Therefore, the finding of the learned Trial Judge is erroneous and requires interference with and accordingly interfered.

39. In the light of the above discussions, this Civil Revision Petition is allowed. The order of the learned District Munsif cum Judicial Magistrate, Cheyyur in I.A. No. 304 of 2022 in O.S. No. 50 of 2020 dated 25.08.2023 is set aside. The exemption which was sought for by the plaintiffs in terms of their memo and application is granted. Leave is also granted to file an amended plaint. After receipt of the amended copy, the learned Trial Judge shall proceed with the suit expeditiously and dispose of the same within a period of **six months** from the date of receipt of the amended plaint copy. Needless to add, the defendants 1 and 2 will be entitled to file additional written statement. It should be confined to the amended pleas. No costs.

29.11.2024

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

arr



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C.R.P.(PD)No.3843 of 2024

V. LAKSHMINARAYANAN, J

arr

To

The District Munsif-Cum-Judicial Magistrate,
Cheyyur

C.R.P.(PD)No.3843 of 2024



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C.R.P.(PD)No.3843 of 2024

29.11.2024