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C.R.P. No. 3398 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2024

CORAM

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.R.P. No. 3398 of 2022
and
C.M.P. No. 18064 of 2022

Sekar (Died)
Chandira

... Petitioner/2nd Respondent/2nd Defendant

Vs.

1. Indirajith

2. Arudhran

... Respondents / Petitioners / Plaintiffs

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, 1950, to set aside the fair and decreetal order dated 01.04.2022 passed by the District Munsif Court at Vanur in I.A. No. 479 of 2017 in O.S. No. 92 of 2012 and consequently dismiss the I.A. No. 479 of 2017 in O.S. No. 92 of 2012.

For Petitioner : Mr. T.Sai Krishnan

For Respondents : M/s. K.Kumar



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ORDER

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This Civil Revision Petition has been preferred as against the order dated 01.04.2022 passed in I.A. No. 479 of 2017 in O.S. No. 92 of 2012 on the file of the District Munsif Court, Vanur, wherein, the respondents herein have filed petition before the Trial Court to implead the petitioner herein as necessary party in the main suit under Order I Rule 10(ii) of C.P.C. and the same was allowed. Against which, the present Civil Revision Petition is filed.

2. According to the petitioner she is the wife of one deceased viz., Sekar, who was the original defendant in the main suit. The respondents herein have filed suit for declaration as against the husband of the petitioner and the husband of the petitioner died in the year 2015. After the demise of the original defendant, the respondents have not taken steps to implead the legal heirs of the deceased/defendant and they only filed petition to implead the petitioner as third party to the proceedings, since she is in possession of the suit property. The petitioner is none other than the wife of the said deceased Sekar, who is the original defendant in the suit. By suppressing the same, the respondents have filed petition under Order 1 Rule 10(ii) of C.P.C. After the demise of the original defendant, the suit would be abated for non-taking steps. But instead of taking steps to implead the legal heirs of the



deceased/defendant, the respondents have only filed application under Order I Rule 10(ii) of C.P.C. Therefore, the order passed by the Trial Court is liable to be set aside.

3. The learned counsel appearing for the petitioner would contend that the respondents herein have filed suit as against the husband of the petitioner for declaration and recovery of possession and the husband of the petitioner died on 20.09.2015. But the respondents have not taken steps to implead the legal heirs of the deceased, who is the defendant in the main suit. Thereafter, they filed petition to implead the petitioner, who is the wife of the original defendant by suppressing the fact that she is the legal heir of the deceased. Therefore, the order passed by the Trial Court is liable to be set aside.

4. The learned counsel appearing for the respondents would contend that the respondents herein filed suit as against one Sekar for the relief of declaration and recovery of possession. During the pendency of the suit, the said Sekar died without issues and now the petitioner is in possession of the property and thereby, she has been included as necessary party. The petitioner was not impleaded as legal heir of the deceased Sekar. Since she is in possession of the property, she has been impleaded as party. Therefore, the



order passed by the Trial Court is in order and the present Civil Revision Petition is liable to be dismissed.

5. This Court heard both sides and perused the materials available on record.

6. The respondents herein have filed petition before the Trial Court to implead the petitioner as third party in the suit, since she is in possession of the property. According to the respondents, the petitioner is the wife of the original defendant Sekar, who died on 20.09.2015. But, the respondents, without taking steps to implead the legal heirs of the defendant/Sekar, filed petition after 2 years to implead the petitioner as third party. Though, the petitioner has pleaded that she is the wife of the defendant/Sekar, she has not produced any document to show that she is the legal heir of the deceased defendant/Sekar. According to the respondents, the said Sekar died. Therefore, without any records, the contention of the petitioner cannot be accepted. Since the petitioner herein has admitted the fact that she is in possession of the property, the respondents have filed suit for the relief of declaration and recovery of possession and she is the proper and necessary party to decide the case. The respondents also not filed the petition as the capacity of legal heir of deceased defendant/Sekar and impleaded the



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petitioner only as a third party who is in possession of the property.

Therefore, the impleadment of the petitioner is essential to decide the case.

7. The learned counsel appearing for the petitioner has relied on the judgment of the Hon'ble Supreme Court of India in ***Bhagwan Swaroop and Others -vs- Mool Chand and Others*** reported in ***(1983) 2 SCC 132***, wherein, the petition has been filed under Order I Rule 10(ii) of C.P.C. instead of filing under Order XXII Rule 4 of C.P.C. In the present case, there is no records to show that the petitioner is the legal heir of the deceased/Sekar, who was the original defendant in the suit and she was impleaded as she is in possession of the suit property. Therefore, the above said case will not be applicable to the present facts of the case.

8. In view of the aforesaid discussions, this Civil Revision Petition has no merits and deserves to be dismissed. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
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To

The District Munsif Court at Vanur.

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P.DHANABAL, J.,

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