



C.R.P(MD)No.872 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.872 of 2019

Dhanalakshmi ... Petitioner/ Petitioner / Petitioner /
3rd Defendant

Vs.

Vellaiayppa (Died)

1.Sekar (Died) ... Respondents /Respondents / Respondents /
Plaintiffs

2.Kadhirvel

3.Vijaya ... Respondents /Respondents / Respondents /
Defendants 1 and 2

4.Rajeswari

5.Muthulakshmi @ Lakshmi

6.Rajamani

7.Elanjiyam

8.Rasammal

9.Pradhiksha

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10.Subiksha

... Respondents

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PRAYER : Civil Revision Petition is filed under Section 115 of Civil Procedure Code to set aside the order dated 27.11.2018 made in I.A.No. 35 of 2018 in I.A.No.485 of 2015 in O.S.No.31 of 2012 on the file of the learned Sub Court, Kulithalai, Karur District and allow the Civil Revision Petition.

For Petitioner : Mr.B.Jameel Arasu

For R-4 to R-7 : Mr.K.Sivabalan
For Mr.M.Bindran

For R-3 & R-8 to
R-10 : No appearance

ORDER

The present Civil Revision Petition has been filed by the 3rd defendant in O.S.No.31 of 2012, challenging an order passed in I.A.No. 35 of 2018 made in I.A.No.485 of 2015 in O.S.No.31 of 2012 dated 27.11.2018 on the file of the learned Sub Court, Kulithalai, Karur District.

2.The 1st respondent herein namely Vellaiayppa had filed the



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above said suit for the relief of declaration of title and permanent injunction. Pending suit an exparte decree came to be passed as against the 3rd defendant who is the revision petitioner herein.

3. The revision petitioner had filed I.A.No.485 of 2015 to condone the delay of 863 days in filing an application to set aside the exparte degree. When the application was pending, the 1st plaintiff namely Vellaiaiyppa had passed away. In order to implead the legal heirs of the 1st plaintiff, the 3rd defendant had filed I.A.No.35 of 2018 in I.A.No.485 of 2015. In the said impleading application, the children of the deceased 1st plaintiff alone were shown as the legal heirs. The legal heirs of the 1st plaintiff had filed a counter and pointed out that the wife of the deceased namely Valliyammal has not been shown as one of the legal heirs in I.A.No.35 of 2018 in I.A.No.485 of 2015. Accepting the said ground, the Trial Court had dismissed the I.A.No.35 of 2018 in I.A.No.485 of 2015 on 27.11.2018. Challenging the same, the present Civil Revision Petition came to be filed.



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4. A careful perusal of the records indicate that one of the legal heirs of the 1st plaintiff namely Sekar is already on record as the 2nd plaintiff in the suit. Therefore, there would not be any abatement of the suit. When an application was filed to implead some of the legal heirs, the Court ought not to have rejected the application and it should have allowed the application and permitted the 3rd defendant to implead the left out legal heirs by filing a fresh application.

5. Therefore, the order passed in I.A.No.35 of 2018 in I.A.No.485 of 2015 dated 27.11.2018 is hereby set aside. However, the suit shall be proceeded with, only after the wife of the Vellaiayppa is impleaded as one of the legal heirs by filing a fresh application.

6. Accordingly, the Civil Revision Petition stands allowed. No costs.

21.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

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To

- 1.The Sub Court,
Kulithalai,
Karur.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

Sml

Order made in
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