



C.R.P(MD)No.1674 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 17.04.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.1674 of 2019

and

C.M.P(MD)No.8651 of 2019

1.K.Shanmugam (Died)

K.Viswanathan (Died)

*(Represented by Worshippers of Viswakarma
Community people for Santhanakaruppu Temple,
Thiruvanaikovil, Trichy)*

2.S.Manikrishnan

3.S.Amsavalli

4.S.Balasubramanian

5.S.Umamageswari

... Petitioners

*(Petitioners 2 to 5 are brought on record as legal
representatives of the deceased sole petitioner
vide Court order, dated 08.04.2024 made in
C.M.P(MD)Nos.13319 to 13321 of 2023 in
C.R.P(MD)No.1674 of 2019)*

Vs.



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1.Kandhakumar

2.Nagarethinam

3.Sivagami

4.CT.Periyakaruppan

5.Usha

6.Meenal Achi

7.Valli

8.Kala

... Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order made in I.A.No.1 of 2019 in O.S.No.1426 of 2006 on the file of the III Additional District Munsif, Trichy, dated 30.04.2019 by allowing this revision.

For Petitioners : Mr.R.Sundar

For R-1, R-8 &
R-2 : No appearance

For R-3 to R-7 : Mr.R.Sundar Srinivasan



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ORDER

The present revision petition has been filed by the plaintiffs in O.S.No.1426 of 2006 on the file of the III Additional District Munsif Court, Trichy, challenging an order of dismissal of an application filed under Order IX, Rule 9 of CPC.

2. The revision petitioner as plaintiff along with one K.Viswanathan had filed the suit in representative capacity as worshippers of Viswakarma Community of Santhanakaruppu Temple for the relief of permanent injunction. Pending suit, the second plaintiff, namely, K.Viswanathan has passed away. Despite several opportunities, the first plaintiff has not taken any steps either to implead additional plaintiffs or the legal heirs of the deceased plaintiff. Therefore, the entire suit was dismissed as abated. Questioning the said order, the plaintiff had filed I.A.No.1 of 2019 to restore the said suit. However, the Trial Court had dismissed the said application also. Challenging the same, the present revision petition has been filed.



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3. According to the learned Counsel appearing for the petitioners, when the suit was pending before the Trial Court, only one of the plaintiffs namely, the second plaintiff alone had passed away. Therefore, the entire suit cannot be dismissed for default. That apart, when the suit has been filed in the representative capacity, the Court ought to have permitted the other plaintiff to implead additional parties or the legal heirs of the deceased plaintiff. Without taking recourse to the said legal provisions, the Court had dismissed the suit in entirety.

4. Per contra, the learned Counsel appearing for the respondent herein brought to the notice of the Court that pending revision petition, the first plaintiff has also passed away and therefore, no purpose would be served in allowing the revision petition and restoring the suit.

5. I have carefully considered the submissions made on either side and perused the materials available on record.



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6. A perusal of the order of the Trial Court indicates that the Trial Court has proceeded to dismiss the suit filed in representative capacity in entirety on the sole ground that, one of the plaintiffs had died and no steps have been taken. Therefore, the order of the Trial Court is erroneous. The Court ought to have permitted the other plaintiff to implead any new additional plaintiffs or to take recourse to the impleading of the legal heirs of the deceased plaintiff. Therefore, the order is set aside. The suit is restored to file. The plaintiffs are at liberty to file appropriate application to add new plaintiffs to the suit in their representative capacity after following Order I, Rule 8 of CPC.

7. With the above said observation, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

17.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

5/7



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- 1.The III Additional District Munsif,
Trichy.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Order made in
C.R.P(MD)No.1674 of 2019

17.04.2024