



C.R.P.(NPD)(MD)No.310 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.03.2024

CORAM

THE HON'BLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(NPD)(MD)No.310 of 2021
and C.M.P.(MD)No.1740 of 2021

1.Chellammal
2.Gandhimathi

... Petitioners

Vs.

S.Sethulakshmi (Died)
Podhumani @ Meena (Died)

1.N.Natarajan

N.Arumugam (Died)
N.Pandi (Died)
N.Paramasivam (Died)

2.P.Priya

3.P.Karthikeyan

4.P.Kamala

... Respondents

PRAYER: Petition filed under Section 115 of C.P.C. to set aside the fair and decretal order dated 13.11.2019 in I.A.No.395 of 2019 in I.A.No.68 of 2019 in A.S.No.33 of 2018 passed by the learned I Additional District Judge of Madurai.



C.R.P.(NPD)(MD)No.310 of 2021

For Petitioners : Mr.V.Om.Prakash
For Respondents : Mrs.Jessi Jeeva Priya for R2 & R3
No Appearance for R1

ORDER

This Civil Revision Petition is directed against an order passed in I.A.No.395 of 2019 in I.A.No.68 of 2019 in A.S.No.33 of 2018, dated 13.11.2019.

2. For better appreciation, it is necessary to state few facts.

One Sethulakshmi filed A.S.No.33 of 2018 on the file of the learned Additional District Judge at Madurai, aggrieved by the dismissal of O.S.No. 344 of 2008, by a judgment and decree dated 22.12.2017. In view of the death of first respondent in the said appeal, the appellant S.Sethulakshmi filed I.A.No.68 of 2019, seeking condonation of delay in setting aside the abatement caused due to death of respondent No.1 in the appeal. In the said I.A.No.68 of 2019, the petitioners herein, who were respondents 6 and 7,



claimed to have filed a counter affidavit and additional counter affidavit opposing the said application. However, the learned lower appellate Court allowed the said application by order dated 24.09.2019 *ex parte* by noting that no counter affidavit is filed by the petitioners herein. Thereafter, the petitioners herein filed I.A.No.395 of 2019 under Order 9 Rule 7 of CPC seeking to set aside the *ex parte* order passed in I.A.No.68 of 2019, on the ground that they have already filed a counter and additional counter affidavit in the said I.A.No.68 of 2019, but the same was not taken into consideration and also on the ground that the petitioner in the said I.A.No. 68 of 2019 died on 19.04.2019 itself. But without taking note of the same, said application was allowed by an order dated 24.09.2019, though the said application in I.A.No. 68 of 2019 itself abated due to death of the sole petitioner therein. But, the lower appellate Court without looking into all these aspects allowed I.A.No.395 of 2019, subject to payment of costs of Rs.1,000/- by a particular date. Aggrieved by the said order in I.A.No.395 of 2019, the petitioner approached this Court by filing the present Civil Revision Petition.



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3. From the materials placed before this Court, especially a copy of the application filed in I.A.No.2 of 2021 in I.A.No.346 of 2019 in A.S.No. 33 of 2018, it is noticed that the sole appellant in A.S.No.33 of 2018 died on 19.04.2019. The said I.A.No.2 of 2021 was filed by the legal representatives of the said sole appellant to come on record in I.A.No.346 of 2019. Thus, there cannot be any dispute about the death of the sole appellant, who is the petitioner in I.A.No.68 of 2019 and admittedly, the said I.A.No.68 of 2019 was allowed by an order dated 24.09.2019 ie., nearly five months after the death of the petitioner in I.A.No.68 of 2019. By operation of law, said I.A.No.68 of 2019 stood dismissed as abated, consequent upon the death of the sole petitioner. In spite of bringing these factual aspects to the notice of the lower appellate Court by filing I.A.No. 395 of 2019, the said application was mechanically allowed by imposing cost of Rs.1,000/-.

4. This Court, having perused the order passed by the lower appellate Court and considering the entire materials on record, is of the considered view that the lower appellate Court in a casual manner without application



C.R.P.(NPD)(MD)No.310 of 2021

of mind, passed the order by imposing costs of Rs.1,000/- on the petitioners.

Hence, the said order to the extent of imposing costs of Rs.1,000/- is liable to be set aside. In the light of the above, the learned lower appellate Court is directed to decide the said application in accordance with law provided the legal representatives of the deceased sole petitioner therein file appropriate application to come on record and intend to pursue the said application.

5. Subject to the above observations, this Civil Revision Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

22.03.2024

NCC : Yes/No

Index : Yes/No

vsm

To

1.The 1st Additional District Judge, Madurai.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.

5/6



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C.R.P.(NPD)(MD)No.310 of 2021

MUMMINENI SUDHEER KUMAR, J.

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C.R.P.(NPD)(MD)No.310 of 2021

22.03.2024