



C.R.P(MD)Nos.2174 & 2175 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 13.09.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P(MD)Nos.2174 & 2175 of 2024

and

C.M.P(MD)No.12317 & of 2024

C.R.P(MD)No.2174 of 2024:

A.Kalimuthu

... Petitioner /
Petitioner /
Plaintiff

Vs.

1.Velchamy

2.Subramani

Subramani (Died)

... 3rd Defendant

Vellammal (Died)

... 4th Defendant

3.Lingammal

... Respondents 1 to 3/
Respondents /
Defendants

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to setting aside the fair and executable order dated 08-08-2024 passed in the application in I.A.No.4 of 2024 in O.S.No.668

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of 2013 on the file of the Additional District Munsif Court,
Thirumangalam and allow the same.

For Petitioner : Mr.J.Barathan

C.R.P(MD)No.2175 of 2024:

A.Kalimuthu

... Petitioner /
Petitioner /
Plaintiff

Vs.

1.Velchamy

2.Subramani

Subramani (Died)

... 3rd Defendant

Vellammal (Died)

... 4th Defendant

3.Lingammal

... Respondents 1 to 3/
Respondents 1 to 5/
Defendants 1 to 5

4.Veeraperumal

5.Panjavarnam

6.Rajalakshmi

... Respondents 4 to 6 /
Respondents 6 to 8 /
Proposed parties



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Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to setting aside the fair and executable order dated 08.08.2024 passed in the application in I.A.No.5 of 2024 in O.S.No.668 of 2013 on the file of the Additional District Munsif Court, Thirumangalam and allow the same.

For Petitioner : Mr.J.Barathan

COMMON ORDER

The plaintiff in O.S.No.668 of 2013 on the file of Additional District Munsif Court, Thirumangalam is the revision petitioner herein. The suit was filed for declaration and permanent injunction. 5 persons were shown as defendants in the suit. They remained exparte. They were set exparte on 25.06.2014. Before exparte decree could be passed, the plaintiff remained absent and the suit itself came to be dismissed for non-prosecution on 05.07.2016. The plaintiff filed I.A.No.158 of 2017 seeking restoration of the suit. When the said IA was taken up for enquiry, it came to be known that D.3 / Subramani and D.4 / Vellammal had passed away. Hence their legal representatives were impleaded in I.A.No.158 of 2017. Notice was issued to them. They did not chose to enter appearance in I.A.No.158 of 2017. I.A.No.302 of 2018 was filed to



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bring on record the legal representatives of the deceased D.3 and D.4.

I.A.No.419 A of 2018 was filed for amendment. Restoration petition (I.A.No.158 of 2017) was allowed on 21.08.2020. The suit was restored to file. It is interesting to note that on 21.08.2020, the following order was passed by the trial Court:

“As per order in IA NO.158/2017 restored dated 21.08.2020. The case previously before restoration bending in the stage of the Ex-parte evidence. The defendants in this case is already set Ex-parte. During pendency in IA NO.158/2017 P/F reported that the D3 and D4 died. After the suit they set Ex-parte hence no necessary to take steps to implead the LR's of the D3 and D4 in this suit. (sick)”

The trial took place and the matter is now posted for arguments. At this stage, the trial munsif appears to have expressed his view that even if the suit is decreed, it cannot bind the legal representatives of the deceased defendants 3 and 4. That led to filing of I.A.No.4 of 2024 for reopening the suit and I.A.No.5 of 2024 for amendment. Both these IAs were dismissed by the Court below vide order dated 08.08.2024. The Court below took in to account the conduct of the plaintiff is not diligently prosecuting the suit. In this view of the matter, it was also felt that filing



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of the application was rather belated. In this view of the matter, IAs were dismissed by levying cost of Rs.5000/-. Questioning the same, these Civil Revision Petitions have been filed.

2.Heard the learned counsel for the revision petitioner. Issuance of notice to the respondents is dispensed with.

3.Order 22 Rule 4(4) of CPC is as follows:

“4. Procedure in case of death of one of several defendants or of sole defendant - (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.”

In this case, the suit was dismissed for default after the defendants were set exparte. The suit was subsequently restored to file. When a suit is restored to file, the stage at which the suit was dismissed for default



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would stand restored. It means after restoration of the suit, the defendants continue to be remain exparte.

4.Subsequently, set aside petition was filed by D.1, D.2 and D.5 by filing I.A.No.5 of 2022. It is necessary to note that D.3 died on 10.09.2016 and D.4 died on 12.09.2017. Their legal representatives were put on notice before the restoration of the suit. They did not chose to file any petition for setting aside the order whereby D.3 and D.4 were set exparte. That is why the Court below rightly observed on 21.08.2020 that there is no necessity to bring the legal heirs of D.3 and D.4 on record.

5.Assuming that the suit is decreed as prayed for, it would certainly bind the legal heirs of D.3 and D.4. Of course in the decree, D.3 and D.4 alone will have to be shown in the cause title. Their legal heirs are not in the suit cause title. Since the factum of their death has been brought to the knowledge of the Court, they cannot be shown as if they are still alive. Even in the cause title of the decree that may be drawn, the fact that they are dead will have been mentioned, but then,



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date on which they were set exparte and the date on which they died will also be incorporated. In this view of the matter, it is not necessary to interfere with the impugned order.

6.In this case, the respondents had endorsed no objection. Therefore, the Court below ought not to have levied cost of Rs.5000/- on the revision petitioner. The cost levied on the revision petitioner is set aside.

7.These Civil Revision Petition are disposed of with the aforesaid observations. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

13.09.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

To

The Additional District Munsif Court,
Thirumangalam.

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G.R.SWAMINATHAN, J.

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