



C.RP(MD)No.1139 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:23.07.2024

CORAM

**THE HONOURABLE MR JUSTICE D.BHARATHA
CHAKRAVARTHY**

**C.R.P(MD)No.1139 of 2022
and
C.M.P(MD)No.4665 of 2022**

T.Gowri

..Petitioner/Petitioner/
Plaintiff

Vs.

1.A.Murugesan
2.N.Ravichandran

S.Dheenadhayalan(Died)

...Deceased 3rd Defendant

3.G.Usha

..Respondents/Respondents/
Defendants 1,2 & 4

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 08.01.2020 passed in I.A.No.3 of 2019 in O.S.No.745 of 2018 on the file of the Sub-Court, Lalgudi.



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For Petitioner	:Mr.G.S.Asok Adhithyan
For R2	:Mr.C.Sankar Prakash
For R3	:Mr.N.S.Ramakrishna Dass
For R1	:No appearance

ORDER

The petitioner originally filed the present suit in O.S.No.745 of 2018. The prayer in the suit is that a decree for cancellation of the sale deeds dated 19.06.2003 and 16.07.2003 and for consequential relief of recovery of possession.

2.The case of the plaintiff is that the plaintiff is the owner of the suit property and when she had to leave for Sri Lanka, she had constituted the first defendant as her power of attorney on 15.09.2000. However, immediately when she came to know that the first defendant is acting against her interest, she cancelled the power by a deed dated 02.11.2000 and also issued a registered notice on 03.11.2000, which was returned with an endorsement not in town and not found. Thereafter, the plaintiff had constituted one Kannan as a Power of Attorney Agent by a Registered Power Deed



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dated 03.11.2000. However, three years after the cancellation of the power of attorney, the present sale deeds were executed by the first plaintiff in favour of the 2nd plaintiff and hence the suit.

3.The suit is resisted by the defendants. The 2nd defendant filed the written statement as if the notice of cancellation of power of attorney was not served on the first defendant. While so, the second defendant had also pleaded that further on 23.03.2005, he has sold the property to one S.Dheenadayalan. The said Dheenadayalan, in turn, had settled the property in favour of his daughter by name Usha, by a registered settlement deed, dated 08.06.2006. Therefore, the plaintiff took out an application to implead the said Dheenadhayalan and Usha as the third and 4th defendants in the suit. Pending the suit, on 05.05.2013 the said Dheenadhayalan died. The same was brought to the notice of the Court by the memo filed by the learned counsel appearing on behalf of the said Dheenadhayalan on 02.02.2018. Immediately thereupon, the plaintiff filed I.A.No.3 of 2019 to implead one



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Manimekalai, W/o.Dheenadhayalan, Senthil Murugan, S/o.Dheenadhayalan and Usha, D/o.Dheenadhayalan, as defendants five to seven in the suit. By an order dated 08.01.2020 the learned trial Judge dismissed the said application on the ground that upon the death of the third defendant, the suit was already abated in the year 2013, without filing an application for setting aside the abatement and condonation of delay in filing the application for impleading the legal heirs alone, is erroneous. The said order was passed on 08.01.2020.

4.It is the contention of the petitioner/plaintiff that the said order is erroneous on the face of it, because already the 4th defendant Usha is on record. She is the daughter of the said Dheenadhayalan. Therefore, there was no question of abatement of suit. Therefore, the application for impleading the other legal heirs was wrongly dismissed by the trial Court. However, instead of filing a review before the very same trial Court or a revision before this Court, the present application in IA.No.3 of 2019 is filed



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bringing yet another application to implead the very same persons under Order I Rule 10(2) of the Code of Civil Procedure, which is now dismissed by the trial Court, as against which, the revision petition is filed.

5.The learned counsel appearing on behalf of the petitioner would submit that when the suit itself has not abated, when the legal heirs were brought on record, the trial Court ought to have allowed the impleading application.

6.Per Contra, the learned counsel appearing on behalf of the respondents would submit that once the impleading application as legal representatives under Order 22 Rule 4 of C.P.C., was dismissed, there was no question of filing the same application under Order I Rule 10(2)of the Code of Civil Procedure and accordingly, the trial Court has rightly dismissed the same.



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7.I have considered the submissions made on either parties and perused the material records of the case.

8.It is true that the application to implead the legal representatives could not have been filed under Order 1 Rule 10(2) of C.P.C without taking such steps as against the earlier order dismissing the petition to bring the legal representatives on record even if it is erroneous. Therefore, with liberty to take out such proceedings as the petitioner may be advised, this Civil Revision Petition shall stand disposed of. No costs. Consequently, connected miscellaneous petition is closed.

23.07.2024

NCC:Yes/No

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To

The Sub-Court,
Lalgudi.



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D.BHARATHA CHAKRAVARTHY, J.

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