



C.R.P(MD)No.2289 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.04.2024**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.2289 of 2019
and
C.M.P(MD)No.11980 of 2019

Mariammal

... Petitioner /Petitioner/
1st Defendant

Vs.

Rakkaal @ Rakammal (Died)

Periyakaruppan @ Kannan

... Respondents/Respondents/
Plaintiffs

(Through the Power Agent V.Sethuraman)

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decretal order passed in I.A.No.132 of 2019 in O.S.No.159 of 2014, dated 14.10.2019 on the file of learned District Munsif, Melur, Madurai District.

For Petitioners : Mr.V.Balaji
for Mr.B.Jameel Arasu

For R2 : Mr.P.T.S.Narendravasan



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ORDER

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The present revision petition has been filed by the 1st defendant in O.S.No.159 of 2014 on the file of District Munsif Court, Melur challenging an order, wherein the trial Court had dismissed the application for rejection of plaint.

2. The suit was originally filed by one Rakkaal @ Rakammal and Periyakaruppan @ Kannan as against the defendants for the relief of declaration of title, permanent injunction or in the alternative for recovery of possession and for future mean profits. Both the plaintiffs were represented through a power agent by name Sethuraman. The said power agent has filed his proof affidavit as P.W.1 on 18.10.2016. He was cross-examined on 27.02.2017. All the witnesses on the side of the plaintiffs were completed and the plaintiffs' side evidence was closed on 19.09.2017. Thereafter, the 1st plaintiff, namely Rakkaal @ Rakammal had passed away on 23.09.2017.

3. After the death of the 1st plaintiff, the 2nd plaintiff claimed that he is the adopted son of the 1st plaintiff and filed an application for amendment of plaint in I.A.No.2081 of 2017 to register the name of the



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2nd plaintiff in the prayer column. This application was allowed on 08.06.2018. This order has not been put to challenge by the defendants.

4. In the meantime, the power agent, namely Sethuraman had filed I.A.No.1766 of 2018 to recall himself for marking Exhibit A.53 which is said to be an adoption deed in favour of the 2nd plaintiff. The defendants have already filed their counter and the same is pending adjudication. At this point of time, the present application for rejection of plaint has been filed by the defendants in I.A.No.132 of 2019. The main ground of attack for rejecting the plaint is that after the death of Rakkaal @ Rakammal, the power agent cannot continue. That apart, unless the validity and genuineness of Exhibit A.53 is proved, the question of treating the 2nd plaintiff as the adopted son of the 1st plaintiff does not arise. Therefore, the claim of entire suit is erroneous and the plaint is liable to be rejected.

5. Per contra, the learned counsel appearing for the respondent had contended that now the power agent has also passed away, they will not be in a position to prosecute I.A.No.1766 of 2018. In fact, they have to file a fresh application for examining the 2nd plaintiff himself in order to mark Exhibit A.53 which is an adoption deed. Hence, no grounds have



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been made out for rejection of plaint.

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6. I have carefully considered the submissions made on either side and perused the material records.

7. It is clear from the materials on record that an application for rejection of plaint has been filed by the defendants after the plaintiffs' side evidence was closed, mainly on the ground that after the death of the 1st plaintiff, the power agent cannot continue to represent the plaintiffs 1 and 2. It is not known whether the plaintiffs 1 and 2 have executed 2 independent power deeds or it is a single power deed. That apart, I.A.No. 1766 of 2018 filed by the power agent cannot now be prosecuted in view of the fact that the power agent had already passed away. Therefore, the 2nd plaintiff has to file an application to examine himself for the purposes of marking Exhibit A.53. The defendants have raised serious dispute with regard to the genuineness, validity and admissibility of Exhibit A.53 adoption deed. This issue has to be decided during trial. The document is yet to be received or marked by the trial Court.



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8. Considering the above said facts, the defendants have not made out any ground for rejection of plaint at this stage. This Civil Revision Petition stands dismissed granting liberty to the 2nd plaintiff to approach the trial Court for filing appropriate application for presentation and marking of the adoption deed. The same shall be considered on merits and in accordance with law by the trial Court. It is made clear that in case if any such application is filed for examination of 2nd plaintiff, the examination as well as cross-examination shall be restricted to the adoption deed.

9. With the said observations, this Civil Revision Petition stands disposed of. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

08.04.2024

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

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To

1.The District Munsif,
Melur, Madurai District.



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



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R.VIJAYAKUMAR ,J.

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Order made in
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