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CRP No. 2397 of 2025



IN THE HIGHCourt OF JUDICATURE AT MADRAS

**DATED: 24-07-2025**

CORAM

**THE HONOURABLE MR.JUSTICE P.B. BALAJI**

**CRP No. 2397 of 2025**

**AND**

**CMP NO. 13825 OF 2025**

1. K.Kalyanasundaram  
S/o. V.Kandasamy Pillai, No.11,  
Ramadoss Nagar, Kolathur, Chennai-  
600 099

Petitioner(s)

Vs

1.  
K.G.PADMANABHAKURUP(died),1.  
P.Brindha  
Residing at Plot No.9/10, Ramadoss  
Nagar, Kolathur, Chennai-600 099

2.P Thushara  
Residing at Plot No.9/10, Ramadoss  
Nagar, Kolathur, Chennai-600 099

3.P Thulasi  
Residing at Plot No.9/10, Ramadoss  
Nagar, Kolathur, Chennai-600 099

Respondent(s)



**PRAYER**

This civil revision petition is filed under Article 227 of the Constitution of India praying to direct the learned II Assistant City Civil Court, Chennai to accept the returned memo dated 09-04-2025 by recalling his order dated 05-04-2025 made in I.A.No.3 and 4 /2024 in O.S.No.7698/2012 and pass such further or other order as this Honourable High Court.

**For Petitioner:** Mr.A.Prakash

For Respondent(s): M/S.A.G.Rajan

**ORDER**

Heard the learned counsel for the parties.

2.It is seen that an order came to be passed in [I.A.Nos.3 & 4](#) of 2024 on 05.04.2025; in suits that have been remanded by the First Appellate Court for a fresh trial, permitting the parties to lead oral and documentary evidence, as well.

3.Pending the said suit, the said interlocutory applications were taken out by the defendant, seeking to file an additional written statement ([I.A.Nos.3 & 4](#) of 2024) and seeking to file additional documents ([I.A.Nos.3 & 4](#) of 2024). The trial Court disposed of the said applications by an order dated 5.4.2025; however, it is seen that the sole respondent passed away on 29.2.2024, pending



the applications in IA Nos. 3 & 4 of 2024, which were filed on 5.2.2024.

Neither the counsel nor the parties have brought it to the notice of the Court that

the sole respondent passed away and the legal heirs have to be impleaded.

4. In view of the said position, a memo came to be filed by the defendant bringing it to the notice of the Court that the sole plaintiff had passed away after the filing of the said interlocutory applications, and therefore the order dated 5.4.25 in IA. Nos. 3 & 4 of 2024 has to be necessarily recalled, since the orders were passed against a dead person.

5. The learned counsel for the respondent fairly states that it is a factual position that after the filing of the applications in I.A. Nos. 3 & 4 of 2024, the sole plaintiff died on 29.2.24, and the trial Court, without being put on notice about the death of the sole plaintiff, has proceeded to dispose of these interlocutory applications in I.A. Nos. 3 & 4 of 2024.

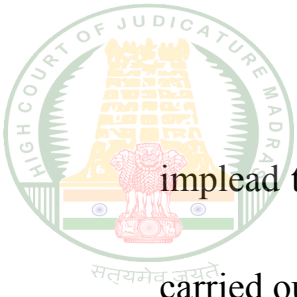
6. The said order is therefore a nullity, having been passed against the dead person. In view of the above, though subsequently the legal heirs have been impleaded, the memo that has been filed by the revision petitioner was



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certainly in order, and the order in IA Nos. 3 & 4 of 2024 ought to have been recalled. However, by docket order dated 09.04.2025, the learned trial Judge has rejected the memo, stating that the question of recalling the orders in I.A. Nos. 3 & 4 of 2024 does not arise on the ground that it is only one of the legal heirs of plaintiff, who had filed a counter in the interlocutory applications. Unfortunately, when the applications had cited only the plaintiff as the respondent and the legal heirs were admittedly not brought on record. The mere fact that the counter affidavit was filed by one of the legal heirs, would not clear the defect of the order being passed against a dead person. Without the cause title being amended and the legal heirs being brought on record in the applications at that point of time, the counter being filed by one of the legal heir does not cure the defect.

8. In view of the above, this Civil Revision Petition is **allowed** and the impugned order is set aside and the trial Court is permitted to re-hear the interlocutory applications in I.A. Nos. 3 & 4 of 2024 and pass orders on merits, and in accordance with law, within a period of four weeks. The revision petitioner shall take immediate steps to carry out amendments in I.A. Nos. 3 & 4 of 2024 and



implead the legal heirs of the deceased sole plaintiff. The said exercise shall be carried out within a period of three weeks, and thereafter, within a period of four weeks, an enquiry shall be conducted, and the applications shall be disposed of on merits in accordance with the law. No costs. Consequently, the connected miscellaneous petition is closed.

**24-07-2025**

jrs

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

The II Assistant City Civil Court, Chennai.



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**P.B.BALAJI J.**

jrs

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