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C.R.P. NOS.2470 & 2472 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 19 / 12 / 2025

ORDER PRONOUNCED ON: 24 / 02 / 2026

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.R.P. NOS.2470 & 2472 OF 2023

AND

C.M.P. NO.15386 OF 2023

IN C.R.P. NO.2470 OF 2023

AND

C.M.P. NO.15391 OF 2023

IN C.R.P. NO.2472 OF 2023

C.R.P. NO.2470 OF 2023

Dr.G.Rajendra Prasad,
S/o.G.C.Kannaiah,
No.3/49, Beri Street,
Nagari,
Andhra Pradesh.

... Petitioner/Petitioner/
third party

Vs.

P.S.Narasimhan,
S/o.Subramani,
373, M.P.S.Salai,
Tiruttani Town and Taluk,
Thiruvallur District.

... Respondent/Respondent/
Plaintiff

D.Vijayalakshmi (died)
W/o.Damodharan,
No.28/21, M Block, 10th Street,
Anna Nagar East, Chennai.

...Defendant



C.R.P. NOS.2470 & 2472 OF 2023

Cause title accepted vide this Court's Order dated July 06, 2023 made in C.M.P. No.13718 of 2023 in C.R.P. SR. 73146 of 2023

PRAYER IN C.R.P. NO.2470 OF 2023: Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the Fair and Decreetal Order dated March 13, 2023 passed in I.A. No.1 of 2021 in O.S. No.38 of 2020 on the file of Subordinate Judge, Thiruthani and allow the said petition and consequently dismiss the Suit.

C.R.P. NO.2472 OF 2023

D.Vijayalakshmi (died)

...Defendant

K.Sathish Premnath,
No.28/21, M Block, 10th Street,
Anna Nagar East, Chennai

Now residing at No.1218 Spence Court,
Marietia, GA, 30062 USA.

Represented by his Power Agent
Dr.G.Rajendra Prasad,
S/o.G.C.Kannaiah,
No.3/49, Beri Street,
Nagari,
Andhra Pradesh.

...Petitioner/ Respondent/
Proposed Defendant

Vs.

P.S.Narasimhan,
S/o.Subramani,
373, M.P.S.Salai,
Tiruttani Town and Taluk,
Thiruvallur District.

...Respondent/Petitioner/
Plaintiff



C.R.P. NOS.2470 & 2472 OF 2023

PRAYER IN C.R.P. NO.2472 OF 2023: Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to confirm the Order of dismissal passed on March 14, 2023 in I.A. No.3 of 2021 in O.S. No.38 of 2020 on the file of learned Subordinate Judge, Thiruthani and dismiss the portion of the order granting liberty to file a fresh application with correct particulars to the Petitioner/Plaintiff who is the Respondent herein and consequently dismiss the Suit.

For Petitioners
in both CRPs' : Mr.C.T.Mohan, Senior Counsel
Assisted by Ms.P.Radhika

For Respondent-1
in both CRPs' : Mr.A.K.Raghavulu

COMMON ORDER

Captioned Civil Revision Petitions are filed under Article 227 of the Constitution of India, 1950. The one in C.R.P. No.2470 of 2023 is filed praying to set aside the Order dated March 13, 2023 passed in I.A. No.1 of 2021 in O.S. No.38 of 2020 on the file of 'the Subordinate Judge, Thiruthani' ['Trial Court' for short] and allow the said petition and consequently dismiss the Suit. The one in C.R.P. No.2472 of 2023 is filed praying to confirm the Order of dismissal dated March 14, 2023 passed in I.A. No.3 of 2021 in O.S. No.38 of 2020 on the file of the Trial Court and



dismiss the portion of the order granting liberty to file a fresh application with correct particulars to the Respondent herein /Petitioner/Plaintiff and consequently dismiss the Suit.

2. The Plaintiff filed the present Suit against one Vijayalakshmi seeking (i) declaration of title over the Suit 'B' schedule property, (ii) mandatory injunction to demolish the constructed portion therein, (iii) delivery of possession of the same after removing the construction put up there, (iv) permanent injunction restraining the Defendants from making further construction and for other reliefs.

3. The case of the Plaintiff is that the Suit 'A' schedule property is the self-acquired property of the Plaintiff's mother, namely, Kamalammal *vide* Sale Deed dated April 19, 1980. After the purchase, Kamalammal constructed a terraced house in the northern portion of the Suit 'A' schedule property and left the southern portion vacant, which was used as backyard. While constructing the said house, Kamalammal left 6 feet lane on the eastern side of the Suit 'A' schedule property to access the backyard. The said 6 feet lane is described as the Suit 'B' schedule property. To be noted, Suit 'B' schedule property is part of the Suit 'A' schedule property.



3.1. Kamalammal executed a Settlement Deed dated September 26, 2007 in respect of the Suit 'A' schedule property to the Plaintiff and pursuant thereto, the Plaintiff was in possession and enjoyment of the same as its absolute owner by paying house-tax, electricity consumption charges and water-tax.

3.2. While so, on March 14, 2020, the Defendant with no right or title in the Suit Property, through her men, encroached over the eastern portion of the Suit 'A' schedule property and erected a wall in the front portion, preventing access to the Plaintiff. In other words, the Defendant encroached upon the Suit 'B' schedule property. Hence, on March 15, 2020, the Plaintiff lodged a complaint before the Deputy Superintendent of Police, Tiruttani. Since there was no response, the Plaintiff filed a Suit against Vijayalakshmi seeking a declaration, mandatory injunction and permanent injunction.

3.3. According to the Plaintiff, the Defendant was residing in Anna Nagar, Chennai. The Suit summons were returned as unserved. Hence, the Plaintiff filed a petition under Order V Rule 20 of 'the Code of Civil Procedure, 1908' ['CPC' for short] seeking substitute service of summons and the same was allowed and was also subsequently effected.



3.4. In the meantime, the Petitioner namely Dr.G.Rajendra Prasad, who is a third party to the Suit filed a petition in I.A. No.1 of 2021 stating that his sister - Vijayalakshmi passed away on February 23, 2016 and the Suit was filed in March 16, 2020. Hence, the Suit filed against dead person is nullity. Accordingly, the third party prayed to dismiss the Suit under Section 151 of CPC.

3.5. After acquiring knowledge about the demise of the Defendant - Vijayalakshmi, the Plaintiff filed an Interlocutory Application under Order I Rule 10(2) of CPC in I.A. No.3 of 2021 praying to implead the proposed Defendant - K.Sathish Premnath (son of the Defendant) represented by his Power Agent as 2nd Defendant.

4. That being the version of the plaintiff, the proposed Defendant represented through his power agent filed a counter questioning the maintainability of the Interlocutory Application filed by the Plaintiff.

5. The Trial Court after hearing both sides, concluded that the sole Defendant - Vijayalakshmi passed away in the year 2016, leaving behind Konidala Satish Premath as her legal heir, who is residing in the United States of America. The third party filed a petition stating that Konidala



Satish Premath executed a Power of Attorney authorizing the Petitioner in I.A.No.1 of 2021 to contest the case. But the original Power of Attorney was not filed. The Petitioner in I.A.No.1 of 2021 did not file any application seeking recognition of his representation as power agent. In absence of such petitions, the Petitioner in I.A.No.1 of 2021 will be considered as a third party to the Suit and he being a third party cannot seek rejection or dismissal of a Suit. Holding so, the Trial Court dismissed the Interlocutory Application in I.A.No.1 of 2021.

5.1. As far as I.A. No.3 of 2021 is concerned, the Trial Court held that Plaintiff has filed the Suit in March 16, 2020, and the Defendant had passed away in the year 2016. The Suit being one for declaration of title, the right to sue survives when the Respondent therein - Konidala Satish Premath being the legal heir of the Defendant succeeded her estate. However, as the plaintiff filed the petition impleading the original Defendant - Vijayalakshmi's son represented through his power agent as respondent, without proper adjudication about the power of attorney or without filing proper petition to recognise power agent. Hence, the Trial Court dismissed I.A. No.3 of 2021 granting liberty to the Plaintiff to file a fresh application with correct particulars within a week thereof.



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6. Feeling aggrieved by the Dismissal Order in I.A. No.1 of 2021, the Petitioner therein / third party has preferred the Civil Revision Petition in C.R.P. No.2470 of 2023. Similarly, feeling aggrieved over the liberty granted to the Plaintiff to file a fresh application in I.A. No.3 of 2021, the Respondent therein / Proposed Defendant has filed the Civil Revision Petition in C.R.P. No.2472 of 2023.

7. Mr.C.T.Mohan, learned Senior Counsel assisted by Ms.P.Radhika, learned Counsel on record for the Revision Petitioners in both Civil Revision Petitions would submit that Vijayalakshmi is none other than an adjacent land owner to the Plaintiff and she passed away on February 23, 2016. While so, the Suit was filed in the month of March 2020. Hence, the Suit filed against dead person by the Plaintiff is nullity. The entire averments in the plaint are false and the plaint has no cause of action. The Trial Court without considering the said aspects, erred in dismissing the Interlocutory Application in I.A. No.1 of 2021. Accordingly, he would pray to allow the Civil Revision Petition in C.R.P. No.2470 of 2023, set aside the Order of the Trial Court and allow the Interlocutory Application in I.A. No.1 of 2021 and consequently dismiss the Suit.



7.1. As far as Civil Revision Petition in C.R.P. No.2472 of 2023 is concerned, his arguments are that the Trial Court is right in holding that the petition filed by the petitioner under Order I Rule 10 (2) of CPC is a defective one and consequently, it is right in dismissing the petition. However, the Trial Court erred in granting liberty to the Plaintiff to file a fresh application which is erroneous approach of law. Accordingly, he would pray to allow the Civil Revision Petition in C.R.P. No.2472 of 2023, dismiss Interlocutory Application in I.A. No.3 of 2021 in its entirety and consequently dismiss the Original Suit.

7.2. He would rely on the following Judgments in support of his contentions: (i) *Pankajbhai Rameshbhai Zalavadia -vs- Jethabhai Kalabhai Zalavadiya (deceased) through L.Rs* reported in 2017 (6) CTC 54; (ii) *M.Dhandapani -vs- P.K.Ramakrishnan* reported in 2013 (3) MWN (Civil) 561; and (iii). *Ambuja Narasimhan -vs- Maxworth Home Ltd.* reported in 2016 (3) CTC 489.

8. *Per Contra*, Mr.A.K.Raghavulu, learned Counsel for 1st Respondent / Plaintiff would submit that the Suit Property is situate in Tiruttani. Though the Defendant - Vijayalakshmi was the adjacent owner,



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she was residing in Chennai. Hence, the Plaintiff was genuinely not aware of the demise of the Defendant on February 23, 2016. When some persons encroached the Suit 'B' schedule property and put up construction there, he *bonafidely* believed that Vijayalakshmi's Agent or men were working at the site. At that time, no one informed the Plaintiff that Vijayalakshmi passed away. In these circumstances, he filed the Suit arraying Vijayalakshmi as sole Defendant. However, when the Plaintiff came to know about the factum of death of Vijayalakshmi, the Plaintiff filed an application for impleading her legal heirs in I.A. No.3 of 2021. In these circumstances, the revision petitioner in C.R.P. No.2470 of 2023 said to be the brother of Vijayalakshmi, filed an application to reject the plaint in I.A. No.1 of 2021, which the Trial Court rightly dismissed. However, the Trial has erred in dismissing the Interlocutory Application in I.A.No.3 of 2021. It ought to have allowed the Interlocutory Application. However, liberty was granted to file fresh application for impleading the original Defendant's legal heirs / legal representatives. Accordingly, he would pray to dismiss both the Civil Revision Petitions.

9. Heard on either side and perused the materials available on record.



10. As far as I.A. No.1 of 2021 is concerned, the petitioner therein who is the revision petitioner in C.R.P. No.2470 of 2023, though he claimed to be the power agent of Konidala Satish Premath who is said to be the legal heir / son of the deceased defendant - Vijayalakshmi, the petitioner therein neither filed the Power of Attorney Deed nor an application to recognize him as a Power of Attorney Holder. In the absence of Power of Attorney document and in the absence of impleading himself as a party, he can only be considered as a third party to the Suit and as such, he cannot seek to reject the plaint. The Trial Court rightly arrived at the said finding and this Court finds no need to interfere with the same. Therefore, the Civil Revision Petition in C.R.P. No.2470 of 2023 must fail.

11. As regards I.A. No.3 of 2021, the suit property is situate in Tiruttani. It is admitted that the sole Defendant - Vijayalakshmi was residing in Anna Nagar, Chennai until her demise. It is also admitted that the Defendant - Vijayalakshmi is an adjacent landowner to the Plaintiff. It is quite natural for a landowner residing in an urban area away from the property, to manage the property through their men or agents. In these circumstances, the Plaintiff's version that, at the time of filing the Suit, he was *bonafidely* not aware of the demise of the Defendant - Vijayalakshmi



as early as on February 23, 2016, is plausible. It is a general rule that if a decree is passed against dead person, the said decree is a nullity. Since no decree is passed in the Suit and the Suit is pending adjudication, the general proposition that Suit against dead person is nullity is not applicable to the present case. This Court deems fit to cite here the decision of this Court in ***C.Saroja -vs- Shriram City Union Finance Limited***, reported in ***2009 (1) CTC 786***, wherein after referring to the decisions of this Court in ***C.Ramamurthi -vs- Karuppusami*** reported in ***1979 (1) MLJ 298*** and ***Loganatha Mandiri -vs- Seshachala Naidu*** reported in ***1993 (2) MLJ 531*** as well as the Judgment of the Hon'ble Apex Court in ***Ramprasad Dagaduram -vs- Vijaykumar Motilal Hirakhanwala*** reported in ***AIR 1967 SC 278***, it was held as follows:

'12. . . .Therefore, even the Supreme Court felt that in matters like this, the Court should have the legal representatives brought on record as new defendants in the place of a dead person, and the date of the filing of the suit should date back to the date of its original presentation into the Court. The Supreme Court observed that Section 22 of the Limitation Act stood in the way of the powers of the Court, which would mean that the Court would always try to uphold the validity of the presentation of the plaint, and the fact that the defendant was dead at the time of the filing of the suit, cannot absolve his legal representatives from being made liable for the debt, provided the claim is established on its merits.'



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12. In this case, as stated *supra*, Konidala Satish Premath is said to be the legal heir of the deceased original Defendant - Vijayalakshmi. When the legal heir / legal representative of the deceased Defendant is alive and when the Suit is one for the declaration of title to property, as rightly held by the Trial Court, right to sue survives in the present case. Hence, the Plaintiff ought to have filed an application under Order XXII Rule 4 of CPC to implead the legal heir(s)/legal representative(s) of the deceased Defendant. But instead, the Plaintiff has filed an application under Order I Rule 10(2) of CPC which is not the most appropriate approach. Considering the same, this Court is of the view that the Trial Court is right in dismissing the application in I.A. No.3 of 2021 while granting liberty to file a proper application. Hence, this Court finds no infirmity or illegality in the Order passed by the Trial Court in I.A. No.3 of 2021. Therefore, the Civil Revision Petition in C.R.P. No.2472 of 2023 also deserves to be dismissed.

13. If the Plaintiff has already filed an application under Order XXII Rule 4 of CPC, the Trial Court shall pass appropriate Order as per law. If not already filed, the Plaintiff is at liberty to file an application under Order XXII Rule 4 of CPC along with an application to condone delay under



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Section 5 of the Limitation Act, 1963 as well as an application to set aside abatement under Order XXII Rule 4 (5) of CPC within three weeks from the date of receipt of a copy of this Order.

14. With the above observations, both Civil Revision Petitions are dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petitions are closed.

24 / 02 /2026

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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To

The Subordinate Judge,
Thiruthani.



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R. SAKTHIVEL, J.

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PRE-DELIVERY COMMON ORDER MADE IN
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