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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2023

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.2049 of 2021

and

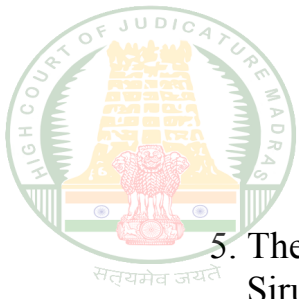
C.M.P.No.15589 of 2021

1. R.Badrammal
2. N.Rangasamy (died)
3. R.Ravikumar
4. R.Deepa Maheswari

... Petitioners

Vs.

1. R.Krishnaswamy
Ex.Village Administrative Officer,
Kemmarampalayam Village,
Mettupalayam Taluk,
Coimbatore District - 641 113.
2. Mu.Suguna
The Revenue Inspector,
Karamadai - 641 104.
3. L.Krishnamoorthy
The Tahsildar,
Office of the Tahsildar,
Mettupalayam - 641 301.
4. The District Collector,
Collectorate, Coimbatore - 641 018.



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5. The Sub-Treasury Officer,
Sirumugai Road, Mettupalayam - 641 301.

6. The District Treasury Officer,
Coimbatore Collectorate,
Coimbatore - 641 018.

7. The Director of Treasury & Accounts,
Teynampet, Chennai.

8. The Principal Accountant General (A&E)
Anna Salai,
Chennai - 600 018.

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order in I.A.No.4 of 2020 in O.S.No.55 of 2018 on the file of the Subordinate Court, Mettupalayam dated 21.12.2020.

For Petitioners : Mr.C.P.Sivamohan
For Mr.PA.Saigovindaraja

For Respondents : Mr.C.Jayaprakash
Government Advocate (CS)

ORDER

This Civil Revision Petition has been filed against the order dated 21.12.2020 passed by the Learned Subordinate Judge, Mettupalayam in I.A.No.4 of 2020 in O.S.No.55 of 2018.



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2. The brief facts of the case of the petitioners are as under :

i) The 1st petitioner herein namely R.Badrammal and her husband N.Rangasamy (deceased) had filed a suit in O.S.No.55 of 2018 against the respondents for direction to direct the respondents / defendants to pay a sum of Rs.1,50,000/- as damages to the plaintiffs jointly or severally and to reconstruct the wrongful demolition of the building structure inside the suit properties. The suit was also for restraining the defendants 4 to 8 from releasing the retirement monitory benefits of the 1st defendant worth about Rs.1,50,000/- till the disposal of the suit.

ii) During the pendency of the above suit, the said Rangasamy and the 3rd respondent herein had died and therefore, the petitioners who are the legal heirs of deceased Rangasamy filed a memo for furnishing legal heir particulars of the demised 3rd respondent. The respondents / defendants have filed objections to the said memo, and on the contentions raised in the said objection memo, the Learned Sub Judge at Mettupalayam has passed an order by rejecting the plea of furnishing legal heir particulars of the 3rd defendant.



iii) Challenging the order of rejection, the petitioners filed

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I.A.No.4 of 2020 under Section 114 and Order 47 of CPC read with Section 151 of CPC, to review the order in memo filed by the petitioners. The said application was dismissed by the Learned Sub Judge at Mettupalayam. Hence, the above C.R.P has been filed.

3. The learned counsel for the petitioners would submit that the Trial Court has failed to appreciate the fact that the demolition of the petitioners' house by the respondents was done without notice being issued to the petitioners according to law, thereby proving that the act of the respondents was done with malice and violating the due process of law. He would also submit that the Trial Court has failed to take into consideration the fact that a private complaint in C.C.No.461/2015 is pending adjudication before the Judicial Magistrate of Mettupalayam against the respondents which was taken on file considering the illegal demolition done by the respondents.

4. The learned counsel for the petitioners would further submit that the Trial Court has failed to ascertain that the petitioners have a legal



right to sue the legal heirs of the deceased 3rd respondent and that the legal heirs of the deceased 3rd respondent are liable to pay compensation to the petitioners. Moreover, he would submit that the Trial Court has prematurely decided in passing an order that the act of the respondent would come under official capacity without conducting detailed trial to decide upon the same.

5. The Learned Government Advocate appearing for the respondents would submit that the petitioners without following the procedures under Order 22 Rule 4 of CPC filed a memo for impleading the legal heirs of the 3rd defendant, which is not acceptable neither in law nor the facts of the case. Further, he would submit that the 3rd defendant died in the year 2017 itself. After lapse of 2 years, the petitioners filed this memo for impleading legal heirs of the 3rd defendant without filing necessary petition for condoning the delay in filing the above impleading legal heirs petition under Article 120 of Limitation Act.

6. Heard the learned counsel for the petitioners and learned Government Advocate appearing for the respondents, and perused the



materials available on record.

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7. On perusal of the records, it is seen that the petitioners 1 and 2 had filed a suit for damages against the respondents 1 to 3. The 2nd petitioner had also filed a private complaint against the respondents. On pending the above suit, the 2nd petitioner and the 3rd respondent herein had died and subsequently, the 3rd and 4th petitioner herein were brought on record as legal heirs of the deceased 2nd petitioner. The petitioners thereafter filed a memo to direct the 3rd respondent's counsel to furnish the legal heir particulars of the deceased 3rd respondent for enabling them to take steps for impleading the legal heir of the 3rd respondents in the suit proceedings. The said memo was rejected by the Learned Sub Judge at Mettupalayam by order dated 07.01.2020. Hence, the petitioners filed an application to review the said order dated 07.01.2020 in the memo filed by the petitioners. The said application was dismissed by the Learned Sub Judge and hence the present C.R.P has been filed.

8. On going through the order passed by the Learned Sub Judge, it is seen that, in the private complaint given by the deceased 2nd petitioner,



it has been informed by the Court that the 3rd respondent / Tahsildar had died and therefore the charge against him was abated. The petitioners themselves have admitted the same in the review application filed before the Court below. In spite of the same, they filed a memo to furnish the legal heir particulars of the 3rd respondent to proceed against them, which cannot be accepted by this Court. The present suit against the 3rd respondent is entirely based on torts and thus the suit abates on the death of the 3rd defendant. In this context, it would be relevant to point out the judgment of the Hon'ble Apex Court *in M.Veerappa vs Evelyn Sequeira & Ors, [AIR 1988 SC 506]*, wherein, it is held that in any action for damages if the claim is found entirely on torts, the suit would abate and it would survive only if the claim is based entirely on contract.

9. The learned counsel for the petitioners would also submit that the suit was filed against the individual capacity of the respondents 1 to 3 and the act of the respondents was done with malice and violating the due process on law, but on perusal of the records, it is seen that the respondents are government officials and they have done their official duty only, as revenue authorities and there is no malafide action on the



part of them, as stated by the petitioners.

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10. Admittedly, the suit was already abated as against the 3rd respondent. Since the alleged act of the respondents 1 to 3 was done in the official capacity, the petitioners cannot be permitted to sue against the legal heirs of the 3rd respondent. Therefore, this Court is of the view that the order of the Learned Sub Judge in I.A.No.4 of 2020 in O.S.No.55 of 2018 cannot be set aside.

11. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27.02.2023

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Index : yes/no

Internet : yes/no

To

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