

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.08.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

S.A.No.207 of 1996

1.Kakkat Poyil Kunhi Matha (died) ..Appellant/Appellant/
Defendant

2.K.P.Yashodha

3.K.P.Lula

4.K.P.Ashokan

(Appellants 2to4 are brought on record

as LRS in the died 1st Appellant

vide order dated 31.1.2007 in

CMP.10847/2006

.. Appellants

-Vs-

1.Ananda Lakshmi Balakrishnan

2.Mrs.Prabha Jayachandran

3.C.Jayakrishnan

4.Prasanna Sivadas

5.Mr.Pradeep

6.Preetha Sanan

7.Mr.Premanand

.. Respondents/Respondent/
Plaintiffs

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of the II Additional District Judge, Pondicherry dated 08.09.1995 made in A.S.No.38 of 1993 modifying the judgment and decree of the Subordinate Judge, Mahe dated 17.02.1993 made in O.S.No.15 of 1980.

For Appellants : A.Shanmugavel
No Appearance

For Respondent : Mr.T.P.Manoharan for R5
for Mr.A.K.Kumarasamy
No Appearance for R1 to R4,
R6 and R7

J U D G M E N T

M/s.A.Shanmugavel, Jayalakshmi Shanmugavel and M.Balasubramanian appeared for Kakkat Poyil Kunhi Matha, who figured as the sole appellant at the time of filing of the second appeal. Subsequently he died and a petition in C.M.P.No.10847/2006 came to be filed on behalf of the LRs of the deceased sole appellant. The very same counsel was engaged

by the LR's of the deceased appellant, who were impleaded as appellants 2 to 4. It seems the original petition filed in December 1999 to bring the said persons on record as appellants 2 to 4 alone was available and the other papers including the affidavit filed in support of the said petition were missing. By order of court, the papers were reconstructed and the said petition came to be allowed. At the time of reconstruction, though Vakalat filed on behalf of the appellants 2 to 4 was not available, the said appellants were not directed to file a fresh Vakalat.

2. However, the counsel who entered appearance for the appellants had made an endorsement on 27.04.2007 praying that the appellants 2 and 3 might be permitted to withdraw the appeal as not pressed. So far as the 4th appellant was concerned, the counsel reported "no instructions". Accordingly, this court passed an order on 30.07.2007 dismissing the second appeal so far as the appellants 2 and 3 were concerned. So far as the 4th appellant was concerned, this court directed issuance of a notice to him, as the counsel reported "no instructions". Accordingly, notice was sent to the 4th appellant by the Registry, but the notice sent to his address has been returned with an endorsement that the 4th appellant was absent.

3. Under such circumstances, this court is of the view that the same shall be sufficient and no further notice be served on the 4th appellant. As the 4th appellant has not utilised the chances made available to him and since the other appellants had chosen to withdraw the second appeal, the second appeal need not be unnecessarily kept pending so far as the 4th appellant alone is concerned, who evinces no interest. Hence the second appeal so far as the 4th appellant is concerned, is disposed of for non prosecution. By this judgment the entire second appeal stands disposed of. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

asr

To

1.The II Additional District Judge,
Pondicherry

2.The Subordinate Judge,
Mahe.

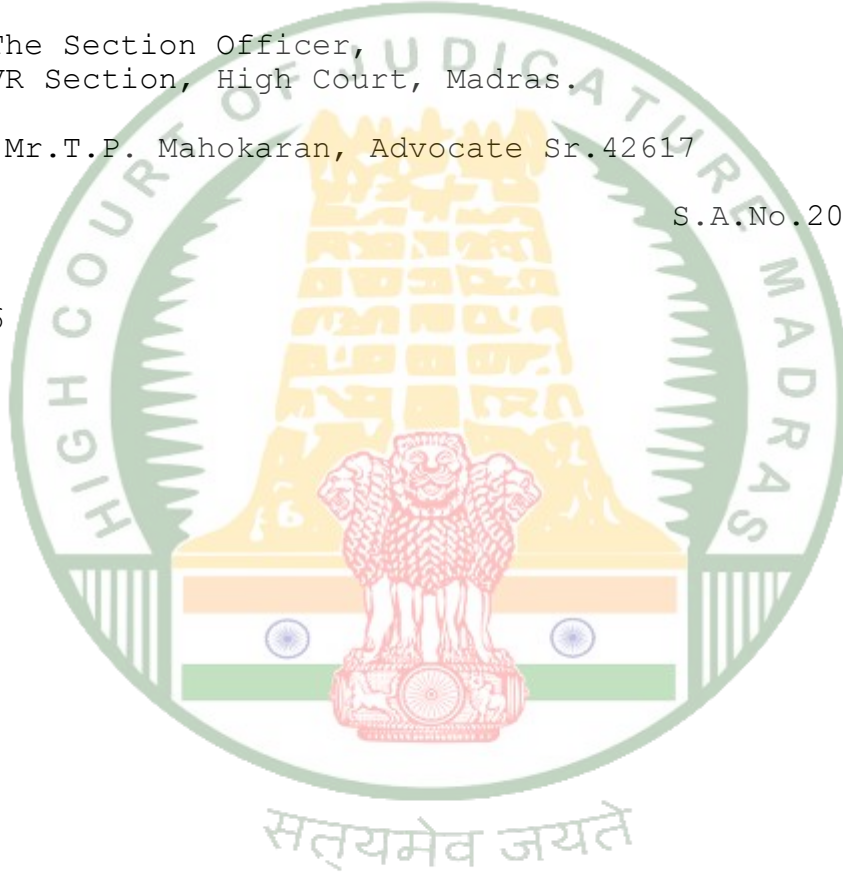
3. The Section Officer, VR Section, High Court,
Chennai.

Copy to: The Section Officer,
VR Section, High Court, Madras.

+ 1 cc to Mr.T.P. Mahokaran, Advocate Sr.42617

S.A.No.207 of 1996

GGK(CO)
EU 5.08.16



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