

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.08.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

S.A.No.745 of 1996

1.Arumuga Gounder
2.M.K.Aruchamy Gounder
3.Subbia Gounder
4.Thangavel Gounder
5.Arumuga Gounder
6.Krishnasamy Gounder
7.Somasundaram
8.Sundarasamy
9.Ramalingam
10.Sellamuthu

... Appellants/defendants 1 to 10

-Vs-

1.Velusamy Gounder
2.Kaliappan

... Respondents/Plaintiff/
11th defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of the Subordinate Judge, Udumalpet dated 16.02.1996 made in A.S.No.49 of 1993 modifying the judgment and decree of the District Munsif, Udumalpet dated 30.04.1993 made in O.S.No.471 of 1989.

For Appellants : M.S.Gunalan

For Respondents : Mr.P.Srinivas

J U D G M E N T

Learned counsel for the respondents filed a Memo dated 27.04.2015 informing the court that the first respondent, who figured as the plaintiff in the O.S.No.471/1989 passed away in the year 2006. Thereafter, the learned counsel for the appellants took time on several occasions for taking steps. On 30.06.2015, the learned counsel for the appellants informed the court that steps were taken in S.R.Nos.49547 to 49555 of 2015. Hence this court directed the Registry to number those petitions, if they were otherwise in order and adjourned the matter for hearing on 07.07.2015. But the petitions filed in those SR numbers came to be returned on 29.06.2015 pointing out the defects. Thereafter the petitions were not re-presented till 11.08.2015. On 11.08.2015, the learned counsel for the appellants represented that the petitions

would be re-presented in a couple of days. Hence the matter was adjourned by two weeks. After the expiry of two weeks, the matter stands listed today.

2. From the submissions made by the learned counsel for the appellants, it transpires that the LR petition under Order XXII Rule 3(2) of CPC, petition to set aside abatement under Order XXII Rule 9 r/w Order XXII Rule 11 of CPC and the petition filed under Section 5 of the Limitation Act have been once again returned as defective and they are yet to be re-presented. The learned counsel for the appellants would contend that an incorrect particular was furnished in the Memo dated 27.04.2015 as if the first respondent (plaintiff) died in the year 2006 and that on the other hand, actually the first respondent/plaintiff died on 28.12.1996.

3. The learned counsel who appears for the first respondent submits that the above said submissions made by the learned counsel for the appellants is correct and a mistake crept in while preparing the Memo dated 27.04.2015, whereby the year of death of the first respondent was typed wrongly as 2006 instead of 1996.

4. The fact remains that even as per the stand taken by the appellants in the un-numbered petitions, which were returned as defective, as revealed by the representations of the learned counsel for the appellants, the first respondent/plaintiff died on 28.12.1996 itself. The steps for impleading his LRs were not taken within the time limited by the rules under the Code of Civil Procedure. Hence the second appeal stood abated long back, namely in March 2006 itself. The abatement of the appeal in the absence of any of the LRs of the deceased party already being on record in any other capacity shall be by operation of law and automatic. As such, it is quite obvious that the second appeal as on today stands abated. Hence the second appeal is disposed of recording the abatement caused by the death of the first respondent/plaintiff. The same can be revived in case the abatement is set aside in the manner known to law.

Accordingly, the second appeal is disposed of. However there shall be no order as to cost.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The Subordinate Judge,
Udumalpet

2.The District Munsif
Udumalpet.

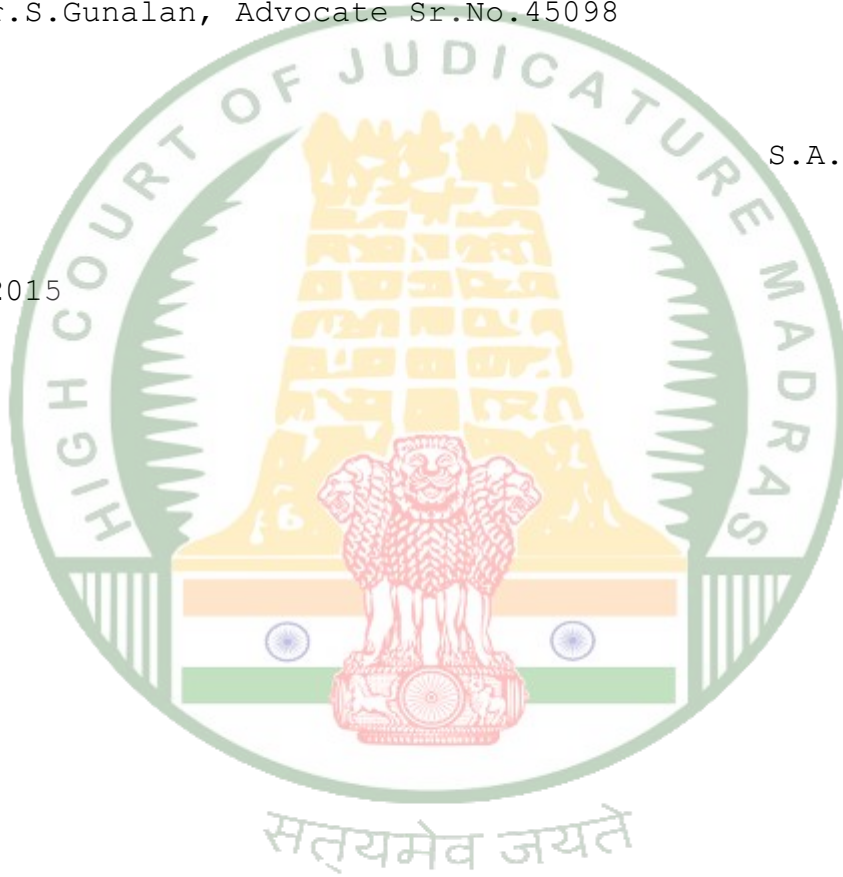
Copy to:The Section Officer, V.R.Section, High Court, Madras-14

1 cc to Mr. P.Srinivas, Advocate Sr.No.45560

1 cc to Mr.S.Gunalan, Advocate Sr.No.45098

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