

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

S.A.No.965 of 1999

Sathaiyyan

... Appellant/1st Respondent/Ist
Defendant

-Vs-

1.Muthusami Padayachi
2.Kumar
3.Minor Ravi
4.Minor Kulothungan

... 1 to 4 Respondents/
Appellants/Plaintiffs

5.Ambusavalli

... 5th Respondent/
2nd Respondent/2nd Defendant

(Minors Respondents 3 and 4 represented by their
guardian the first respondent)

Second Appeal filed under section 100 of C.P.C to set aside
the judgment and decree dated 13.10.1997 passed in A.S.No.160 of
1988 by the Subordinate Court, Ariyalur modifying the judgment and
decree dated 25.02.1988 passed in O.S.No.135 of 1983 by the
District Munsif Court, Jeyamkondam.

For Appellant : No appearance

For Respondent : M/s.Sarvabhuvan Associates for R5

JUDGMENT

There is no representation for the appellant.

2. The learned counsel for the 5th respondent submits that the
sole appellant died on 15.09.2000 and the 5th respondent died on
28.09.2001 and that steps were not taken in time. However, from
the order sheet, it seems a representation was made on 26.06.2015
on behalf of the 5th respondent that LR application was filed on
19.05.2015. Subsequently, when the matter stood listed on
09.07.2015, there was no representation for the appellant. Again
on the adjourned date, namely on 28.07.2015, it was represented

that the LR application filed in the second appeal had been returned and it had not been re-presented. When the matter again stood listed on 11.08.2015, the learned counsel for the appellant took time by two weeks. Thus, the matter stands listed today.

3. Today also there is no representation for the appellant. Be that as it may, the fact remains that within the time allowed by the rules under the Code of Civil Procedure, the petition to implead the legal representatives of the deceased sole appellant had not been filed. No memo indicating the date of death of appellant and the 5th respondent came to be filed and no proof of death has been produced. Though it was represented that LR application had been filed on 19.05.2015, they were returned by the Registry pointing out certain defects. The said petitions were not re-presented after rectifying the defects. Since the said petitions have not been re-presented and the matter is left without representation on behalf of the appellant, this Court deems it appropriate to dismiss the second appeal.

4. Accordingly, this second appeal is dismissed for non-prosecution. However, it is clarified that this order of dismissal for non-prosecution shall be superfluous in case abatement of the second appeal has occurred due to the failure to take steps within the time allowed by the rules under the Civil Procedure Code. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gpa

To

1. The Subordinate Judge,
Ariyalur
2. The District Munsif Judge,
Jeyamkondam

+lcc to M/s.Sarvabhauman Associates, Advocate, S.R.No.45060
+lcc to Mr.Soundaragopal, Advocate, S.R.No.45103

S.A.No.965 of 1999

(CO)
CA(05/10/2015)