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are: 1. Whether a Suit for partition and Appeal thereon are maintainable without impleading all the legal heirs of defendants 1 to 3? 2. Whether the previous partition pleaded by defendants 1 to 3 is true, valid and binding on the plaintiffs? 3. Whether the agreement of sale dated 15.08.1966, marked as Ex.B-1, is true, valid and enforceable under law? 4. POINT No.1: Admittedly, the suit is filed for partition of the schedule property into 4 equal shares and for allotment of one such equal share to them. The suit was originally filed against defendants 1 to 8, who are the legal heirs of 3 branches and the plaintiffs being the children of 4th branch claimed both the reliefs of partition and declaration. Thus, the suit is for two reliefs; the primary relief is for partition. Undoubtedly, defendants 1 to 3 died during pendency of the Appeal and the plaintiffs-appellants filed Petitions to recognise the legal heirs of 1st and 2nd defendants-respondents, who are already on record as defendants-respondents 4 to 6 and defendants-respondents 7 and 8 and to bring the 9th respondent as legal heir of 3rd respondent in the Appeal and to set-aside the abatement order under Order XXII Rule 9 of C.P.C. along with Petitions to condone the delay of 402 days in representing the Petitions and the delay of 3,481 days in filing the Petition to set-aside the abatement order and thereupon this Court ordered notices to the defendants-respondents directing the plaintiffs-appellants and the respondents, who are already on record in this Appeal by registered post with acknowledgment due. The petitioners-appellants did not comply the directions of this Court and failed to file proof of service; this Court having no other option dismissed both the A.S.M.P. Nos.2943 and 2944 of 2013, filed under Section 5 of the Limitation Act, 1963 and rejected the petition filed under Order XXII Rule 9 of C.P.C. by a specific order. 15. In those miscellaneous Petitions, the petitioners-appellants though specifically disclosed the dates of deaths of respondents 1 to 3 even though the legal heirs of respondents 1 and 2 are on record as respondents 4 to 6 and 7 and 8, the legal heir of 3rd respondent was not on record and the petitioners-appellants filed petition to bring the legal heir of 3rd respondent as 9th respondent. Unfortunately, the petitioners-appellants did not prosecute the miscellaneous Petitions and, hence, those petitions are ended in dismissal. 16. When a suit is filed for both the reliefs of partition and declaration, all the persons interested in the property be impleaded as parties to the suit, more particularly, in a suit for partition in the absence of persons entitled to claim share in the property, the suit cannot be decided effectively. When a similar situation came up before this Court in Balireddy Appalanarasiah (died) and others Vs. Balireddy Saddhu and others, this Court held that in a suit for partition all the persons who are entitled to claim right are to be impleaded otherwise the suit is liable to be dismissed. 17. When similar question came up before the Apex Court in Kanakarathanammal Vs. V.S. Loganatha Mudaliar, in Para 15 of the judgment, it was held as follows: "It is unfortunate that the appellant's claim has to be rejected on the ground that she failed to implead her two brothers to her suit, though on the merits we have found that the property claimed by her in her present suit belonged to her mother and she is one of the three heirs on whom the said property devolves by succession under Section 12 of the Act. That, in fact, is the conclusion which the Trial Court had reached and yet no action was taken by the appellant to bring the necessary parties on the record. It is true that under Order 1, Rule 9 of the Code of Civil Procedure no suit shall be defeated by reason of the mis-joinder or non-joinder of the parties, but there can be no doubt that if the parties who are not joined are not only proper but also necessary parties to it, the infirmity in the suit is bound to be fatal. Even in such cases, the Court can under Order 1, Rule 9 direct the necessary parties to be joined, but all this can and should be done at the stage of trial and that too without prejudice to the said parties plea of limitation. Once it is held that the appellant's two brothers are co-heirs with her in respect of the properties left intestate by their mother, the present suit filed by the appellant partakes of the character of a suit for partition and in such a suit clearly the appellant alone would not be entitled to claim any relief against the respondents. The estate can be represented only when all the three heirs are before the Court. If the appellant persisted in proceedings with the suit on the basis that she was exclusively entitled to the suit property, she took the risk and it is now too late to allow her to rectify the mistake. In Naba Umar Hazra v. Radhashyam Mahish HYPERLINK "javascript:fnOpenGlobalPopUp('/ba/disp.asp';287150','1');", 10, Sub-rule 2 direct the necessary parties to be joined, but all this can and should be done at the stage of trial and that too without prejudice to the said parties plea of limitation. Once it is held that the appellant's two brothers are co-heirs with her in respect of the properties left intestate by their mother, the present suit filed by the appellant partakes of the character of a suit for partition and in such a suit clearly the appellant alone would not be entitled to claim any relief against the respondents. The estate can be represented only when all the three heirs are before the Court. If the appellant persisted in proceedings with the suit on the basis that she was exclusively entitled to the suit property, she took the risk and it is now too late to allow her to rectify the mistake. In Naba Umar Hazra v. Radhashyam Mahish HYPERLINK "javascript:fnOpenGlobalPopUp('/citation/crosscitations.asp';MANU/PR/0053/1931','1');", MANU/PR/0053/1931 the Privy Council had to deal with a similar situation. In the suit from which that appeal arose, the plaintiff had failed to implead co-mortgagors and persisted in not joining them despite the pleas taken by the defendants that the co-mortgagors were necessary parties and in the end, it was urged on his behalf that the said co-mortgagors should be allowed to be impleaded before the Privy Council. In support of this plea, reliance was placed on the provisions of Order 1, Rule 9 of the Code. In rejecting the said prayer, Sir George Lowndes who spoke for the Board observed that 'they are unable to hold that the said rule has any application to an appeal before the Board in a case where the defect has been brought to the notice of the party concerned from the very outset of the proceedings and he has had ample opportunity of remedying it in India". 18. Even in the earlier judgment of this Court in Uppu Jhansi Lakshmi Bai Vs. Venkateswara Rao, it was held as follows: "When necessary party to the appeal was not impleaded in the appeal, the appeal is liable to be dismissed on that ground alone." 19. Therefore, if necessary party is not impleaded in the suit, it has to be dismissed on that ground alone. In another judgment of this Court in Jahangirji and others Vs. K. Kumar, this Court laid down similar principle that defect of non joinder of necessary parties could not be cured by impleading them in Appeal and fatal to suit for partition. 20. In K. Bhaskar Rao Vs. K.A. Rama Rao, a learned judge of this Court while dealing with a suit for partition, where the defendants in the written statement raised the plea of non-joinder of the two sisters of the parties for which the plaintiff stated in his rejoinder that as they were already married and were given sufficient share in the form of cash and articles, they were not necessary parties, the plaintiff came up with an application to implead the sisters as parties in the first appeal, this Court rejected the request holding that the defect of non-joinder of necessary parties being fatal, the same cannot be cured by impleading them in the appeal and upheld the dismissal of the suit on the ground of non-joinder of necessary parties by the trial Court. The decisions reported in Naba Kumar Hazra and another Vs. Radhashyam Mahish and others, Chenthiperumal Pillai Chanthanamuthu Pillai Vs. D.M. Devasahayam and Loganatha Mudaliar² were on the similar question of proposition that non-joinder of necessary party is a fatal defect and the suit for partition is liable to be dismissed even on that ground alone. 21. In another Division Bench judgment of this Court in Addepalli Venkata Laxmi Vs. Ayinampudi Narasimha Rao, this Court considered about the plea of non-joinder of necessary parties for the first time in the appeal during argument but the same was not entertained. However, in the present case, defendants 1 to 3 died only during pendency of the appeal and question of raising a plea at the earliest point of time i.e., before framing issues, as required under Order I Rule 9 of C.P.C. does not arise but when a suit is filed for both the reliefs of partition and for declaration, in the absence of legal heirs, the Appeal is not maintainable since the rights of the legal heirs of deceased defendants-respondents cannot be determined in their absence. 22. In fact, as seen from the pleadings in the plaint, defendants 4 to 6 and 7 and 8 being the children of 1st and 2nd defendants are also entitled to claim share in the property along with their fathers and after death of their fathers, they could succeed the estate of their fathers, 1st and 2nd defendants. If, for any reason, a preliminary decree for partition is passed in their absence certainly, it will affect the valuable rights of defendants 4 to 6 and 7 and 8 in the suit. That apart, the 3rd defendant also died during pendency of the Appeal as admitted by the petitioners-appellants in A.S.M.P. Nos.2943 and 2944 of 2013 and proposed to bring the 9th respondent as legal heir of 3rd respondent but failed. Even assuming for a moment that, respondents 4 to 6 and 7 and 8 were already on record and remained ex parte still the legal heir of the 3rd respondent has to be brought on record but failed to do so by the petitioners-appellants before this Court, in the absence of legal heir of 3rd respondent, the Appeal Suit cannot be decided. 23. In Dhanalakshmi and others Vs. P. Mohan and others, the Apex Court discussed about the necessity of impleading the purchasers of the property as necessary parties to a suit for partition and held that the purchaser of the property is a necessary party to the suit in whose absence the decree cannot be passed effectively. 24. In another decision of the Apex Court in The State of Punjab Vs. Nathu Ram, the Apex Court discussed about the scope of Order I Rule 9 of C.P.C. and held that when the parties to the appeal died during pendency of the appeal, their legal heirs have to be brought on record and in their absence, the Appeal is not maintainable. 25. According to Order I Rule 9 of C.P.C. no suit shall be defeated by reason of the misjoinder or non-joinder of parties and the Court may, in every suit, deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. It follows, therefore, that if the Court can deal with the matter in controversy so far as regards the rights and interests of the appellants and the respondents other than the deceased respondent, it has to proceed with the appeal and decide it. It is only when it is not possible for the Court to deal with such matter, that it will have to refuse to proceed further with the appeal and therefore dismiss it. 26. Even according to the provisions of C.P.C., plea of non-joinder has to be raised at the earliest stage i.e., before framing of issues but, in the present case raising such plea before the trial Court does not arise since death of defendants 1 to 3 took place during pendency of the Appeal. Hence, by applying the principles laid down in catena of decisions referred supra, the present Appeal is liable to be dismissed on the ground of non-joinder of proper and necessary parties to this Appeal. Added to that, defendants 4 to 8 already remained ex parte before the trial Court but the plaintiffs are not entitled to claim the benefit under Order XXII Rule 4(4) of C.P.C. before this Court for the reason that this

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