

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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CIVIL MISCELLANEOUS APPEAL No.358 of 2015

JUDGMENT:

This is an appeal under Order XLIII Rule 1 of the Code of Civil Procedure, 1908, ('the Code', for brevity) by the unsuccessful appellants/plaintiffs 4 to 6 assailing the orders dated 18.11.2013 of the learned IX Additional Chief Judge, City Civil Courts, Hyderabad, passed in I.A.No.143 of 2009 in O.S.No.39 of 2003 filed under Order IX Rule 9 read with Section 151 of the Code, requesting to set aside the order of dismissal for default dated 18.08.2009 passed in the said suit and to restore the suit to its original position.

2. I have heard the submissions of the learned senior counsel appearing for the appellants/plaintiffs 4 to 6 ('plaintiffs 4 to 6', for brevity) and the learned senior counsel appearing for respondents 2 to 4/plaintiffs 1 to 3 ('plaintiffs 1 to 3', for brevity). The sole defendant, who is the first respondent herein, had died and her Estate is being represented by an officer appointed by the Court. As per the submissions made before this Court, the said officer of the Court was appointed to represent the estate of the deceased-sole defendant since she had not left behind any legal representatives. None appeared on behalf of the said Officer of the Court who is representing the estate of the deceased sole defendant. I have perused the material record.

3. The facts that lead to filing of the present appeal by the plaintiffs 4 to 6 may be stated, in brief, as follows:-

The plaintiffs 4 to 6, who are the appellants herein, and the plaintiffs 1 to 3, who are the contesting respondents 2 to 4 herein, together brought the suit against the sole defendant (since died) for specific performance directing execution of a sale deed in favour of the plaintiffs in terms of the draft sale deed dated 20.10.1999 signed and filed by the defendant before the Assessing Officer, Circle 3(1), Office of the Assistant Commissioner of Income Tax, Hyderabad in respect of the suit schedule

property and for perpetual injunction restraining the sole defendant, her agents, attorneys, henchmen or anybody else claiming through her from alienating, selling or creating any charge in and over the suit schedule property and for perpetual injunction restraining the defendant, her agents, attorneys, henchmen or anybody claiming through her from interfering with the peaceful possession and enjoyment of the plaintiffs over the plaint schedule property and for costs. While so, the suit was dismissed for default on 18.08.2009 and hence, the plaintiffs 4 to 6 filed an application under Order IX Rule 9 of the Code requesting to set aside the order of dismissal for default dated 18.08.2009 and restore the suit to its original position. That application was resisted by the plaintiffs 1 to 3. On merits, the trial Court had dismissed the said application of plaintiffs 4 to 6. Therefore, the plaintiffs 4 to 6 are before this Court as appellants.

4. The case of the plaintiffs 4 to 6, as stated in the affidavit of their natural father and next friend, in brief, is this:

The plaintiffs 4 to 6 and the plaintiffs 1 to 3 together brought the suit for specific performance and perpetual injunctions against the sole defendant. The plaintiffs had also filed I.A.No.368 & 369 of 2003 for temporary injunctions viz., (i) to restrain the vendor, her men and agents etc., from alienating the property in any manner and (ii) to restrain from interfering with the peaceful possession of the plaintiffs over the suit schedule property. The trial court had granted *status quo* orders and also restrained the defendant, her men, agents etcetera from interfering with the peaceful possession and enjoyment of the suit schedule property by order dated 28.08.2003; and in the Civil Miscellaneous Appeals preferred before this Court, the orders of the Court below were confirmed by virtue of the order of this Court dated 09.02.2004. The said orders have attained finality. The plaintiffs 4 to 6 are the children of the deponent of the affidavit. The plaintiffs 1 to 3 are the children of the brother of the deponent and they are being represented by their father and next friend in the suit. The said brother of the deponent by name G.Rajender Reddy had got drafted the plaint by engaging Sri Shyamsunder Murthy, advocate. The deponent believed his brother; and, without going through the contents of the drafted plaint and without doubting the integrity of his said brother, had signed on the plaint on behalf of the plaintiffs 4 to 6, who are his minor children. At the time of preparation of the affidavit to be filed in lieu of examination in chief, the deponent had requested the said

counsel to seek amendment of the pleadings, which are objectionable. There was correspondence exchanged between the deponent and his counsel. The deponent was informed that the Presiding Officer of the Court concerned was transferred and the Court is lying vacant and that, therefore, he will be informed as and when the Presiding Officer takes charge. Therefore, the deponent did not enquire about the status of the case expecting to receive a call from his learned counsel. The deponent had received as many as 60 caveat petitions lodged by his brother and his children in the last week of August, 2009, wherein, no details were mentioned. It was alleged therein that the deponent had tried to set up a false claim in respect of the suit schedule property. On 03.09.2009, the deponent was physically prevented from entering into his residential house and was stopped at the gate by his brother and four other unsocial elements. On enquiry, he was informed that he cannot use the way through the schedule property as his brother and his children had purchased the schedule property. On hearing the same, the deponent was surprised and shocked as the defendant has got no right to execute the sale deed as the property was only a way or passage to enter the house and the same connects the house to the main road No.13 and there is no other way. Thus, the deponent, who had returned from the local market to his house, was made to stand outside the gate for about one hour and so. Therefore, he was forced to lodge a complaint with the Station House Officer, Jubilee Hills Police Station, Hyderabad. The police had called the brother of the deponent; and on enquiry by the police, the brother of the deponent and his children, i.e., plaintiffs 1 to 3 had revealed that they had purchased the suit schedule property and also the pathway by virtue of a registered sale deed dated 17.08.2009. The brother of the deponent knows about the orders granted by the Court as he was representing his children as next friend and natural guardian. Therefore, the brother of the deponent and his children, i.e., plaintiffs 1 to 3 committed breach of the orders of the trial Court, which are confirmed by this Court. They are liable to be punished under the Contempt of Courts Act. On enquiries made about the status of the present suit, the deponent had learnt that the counsel on record Sri Shyamsunder Murthy has determined his Vakalat without informing the deponent and that when the suit came up before the learned in-charge Officer of the Court, it was dismissed for default on 18.08.2009. Thus, the deponent came to know about the dismissal of the suit on 07.09.2009 on taking assistance of an advocate and on making enquiries about the status of the suit. The learned counsel Sri Shyamsunder Murthy or the brother of the deponent did not inform the deponent

about the dismissal of the suit. The brother of the deponent, for vested reasons and unlawful gains, had joined hands with the opposite parties. Hence, the plaintiffs 4 to 6 are constrained to file the petition seeking to set aside the order of dismissal for default passed in the suit and for restoration of the suit.

5. As already noted, the sole defendant died and her estate is being represented by an officer appointed by the Court. The plaintiffs 1 to 3 got filed a counter resisting the application of the plaintiffs 4 to 6.

5.1 The contentions in the counter affidavit of the father and natural guardian of the plaintiffs 1 to 3, in brief, are as follows:

The material allegations that the plaint was got drafted by the father of the plaintiffs 1 to 3 and that the father of the plaintiffs 4 to 6 had signed the plaint without going through the contents and the further material allegations in the affidavit of the deponent filed in support of the petition are false. Both the brothers gave instructions to the counsel for preparation of the plaint. The deponent of the affidavit under reply, who is the father of the plaintiffs 4 to 6, was personally looking after the day-to-day proceedings in the suit, he being the next friend and father of plaintiffs 4 to 6. He had consciously allowed the suit to be dismissed for default in view of the stand taken by him in O.S.No.180 of 2006 filed by P.Venkateswar Rao. The counsel Sri Shyamsunder Murthy gave up his Vakalat for the plaintiffs 4 to 6 after giving due notice of the same to them. In fact, the said counsel had filed I.A.No.167 of 2007 for permission to withdraw his vakalat filed on behalf of the plaintiffs 4 to 6 and the said petition was allowed by the Court. The said fact was well within the knowledge of the plaintiffs 4 to 6 and their next friend and father. After giving ample opportunity, the trial Court was pleased to dismiss the suit for default on 18.08.2009 when there was no representation on behalf of the petitioners/plaintiffs 4 to 6. The material averments in the affidavit of the deponent filed in support of the petition, which are contrary to the said facts, are false; and the same are invented as an afterthought. Having consciously allowed the suit to be dismissed for default, it is not open for the plaintiffs 4 to 6 to say that the suit was dismissed for default due to the withdrawal of the vakalat by the counsel without notice to them. There was a direction by this Court in the Civil Miscellaneous Appeals (CMA Nos. 3772 and 3773 of 2003) to

dispose of the suit within six months from the date of receipt of orders of this Court dated 09.02.2004. The plaintiffs 4 to 6 and their father know well about the said direction, but the father of plaintiffs 4 to 6 had consciously allowed the suit to be dismissed for default. As the sole defendant failed to execute the sale deed for the balance area of 1137 square yards, the present suit in O.S.No.39 of 2003 was filed for specific performance of the oral agreement. The defendant filed a written statement disputing the suit agreement. While so, the father of the plaintiffs 4 to 6 had tampered with the previous agreement and had set up one P.Venkateshwar Rao as a co-purchaser and substituted his name in place of the name of the father of the plaintiffs 1 to 3 and had got filed the suit in O.S.No.180 of 2006 in the Court of the XII Additional Chief Judge (FTC), City Civil Court, Hyderabad for specific performance of the said tampered agreement. The father of the plaintiffs 4 to 6 filed a written statement in the said suit supporting the case of P.Venkatshwar Rao, the plaintiff in the said suit. He had further pleaded in his written statement filed in the said suit that the suit in O.S.No.39 of 2003 could not be seriously pursued by him as the Eastern portion of the said property rightly belonged to the plaintiff, i.e., P.Venkateshwar Rao. By taking the said stand in O.S.No.180 of 2006, the deponent under reply in the present petition, i.e., the father of the plaintiffs 4 to 6 had given up his rights over the agreements of sale dated 31.03.1999 and 02.06.1999 and the oral agreement dated 05.10.1999. In the circumstances, the sole defendant had negotiated afresh with the brother of the deponent, i.e., the father of the plaintiffs 1 to 3. Pursuant thereto, on 19.08.2009, the sole defendant got registered a sale deed vide document No.2437 of 2009 in respect of 942 square yards in favour of plaintiffs 1 to 3 and also an agreement of sale-cum-GPA, vide document no. 2439/2009 in respect of 195 square yards bearing premises No.8-2-293/82/A/172/2, 3 & part of 8-2-293/82/A/171/2 and 3 171/283 in favour of plaintiffs 1 and 2. The allegation that the subject matter of the property in the said registered sale deed/agreement of sale cum G.P.A. covers the way/passage to the property of G.Shivender Reddy is not correct. The plaintiffs 4 to 6 and their guardian had consciously allowed the suit to be dismissed for default. The interim injunction granted prohibited third parties from alienating the properties; but, any alienation *inter se* between the parties is not prohibited by the order of injunction. The petition is not maintainable and may be dismissed.

6. It appears from the record produced before this Court that at the time of enquiry, G.Shivender Reddy, the father and next friend of plaintiffs 4 to 6 was examined as CW1 and Sri Shyamsunder Murthy, Advocate was examined as RW1 and that his affidavit in lieu of examination in chief was filed and he was cross-examined by the counsel for the officer who is representing the estate of the deceased sole defendant and the counsel for the plaintiffs 4 to 6, though the appendix mentioned at the end of the order impugned indicates that no oral and documentary evidence was adduced. However, it appears that no documentary evidence was adduced. As already noted, since the trial Court had dismissed the application of the plaintiffs 4 to 6 and had refused to restore the suit to file after setting aside the order of dismissal for default, the plaintiffs 4 to 6 are before this Court.

7. The learned senior counsel for the appellants/plaintiffs 4 to 6 would contend as follows: "The Court below had failed to see that the learned counsel for plaintiffs 4 to 6 has withdrawn his Vakalat by filing a petition and the father, who is the natural guardian and a next friend of the plaintiffs 4 to 6, has no knowledge about the same till 07.09.2009. The Court below ought to have seen that justifiable cause was shown for setting aside the order of dismissal for default and restoring the suit to file. The Court below has dragged itself into unnecessary discussion without examining as to whether valid cause has been shown for the absence of the guardian and next friend of the plaintiffs 4 to 6 on the day on which the suit was dismissed for default. The court below ought to have seen that sufficient cause was shown and that the circumstances that were explained and that lead to the dismissal of the suit for default, were beyond the control of the minor plaintiffs 4 to 6. The impugned order is erroneous. Valuable rights of the plaintiffs 4 to 6, who are minors, concerning immovable property are involved in the suit. Therefore, the interests of justice would require that the appellants should be given an opportunity to have their case decided on merits by restoring the suit and by setting aside the order of dismissal for default."

8. On the other hand, the learned senior counsel for the plaintiffs 1 to 3 had contended as follows:

The deponent of the affidavit under reply, who is the father of the plaintiffs 4 to 6, was personally looking after the day-to-day proceedings in the suit, he being the next friend and father of plaintiffs 4 to 6. He had consciously allowed the suit to be dismissed for default in view of the stand taken by him in O.S.No.180 of 2006 filed by P.Venkateswar Rao. The counsel Sri Shyamsunder Murthy gave up his Vakalat for the plaintiffs 4 to 6 after giving due notice of the same to them. In fact, the said counsel had filed I.A.No.167 of 2007 for permission to withdraw his vakalat filed on behalf of the plaintiffs 4 to 6 and the said petition was allowed by the Court. The said fact was well within the knowledge of the plaintiffs 4 to 6 and their next friend and father. After giving ample opportunity, the trial Court was pleased to dismiss the suit for default on 18.08.2009 when there was no representation on behalf of the petitioners/plaintiffs 4 to 6. There was a direction by this court in the Civil Miscellaneous Appeals (CMA Nos. 3772 and 3773 of 2003) to dispose of the suit within six months from the date of receipt of orders of this Court dated 09.02.2004. The plaintiffs 4 to 6 and their father know well about the said direction, but the father of plaintiffs 4 to 6 had consciously allowed the suit to be dismissed for default. As the sole defendant had failed to execute the sale deed for the balance area of 1137 square yards, the present suit in O.S.No.39 of 2003 was filed for specific performance of the oral agreement. The defendant had filed a written statement disputing the suit agreement. While so, the father of the plaintiffs 4 to 6 tampered with the previous agreement and had set up one P.Venkateshwar Rao as co-purchaser and substituted his name in place of the name of the father of the plaintiffs 1 to 3 and had got filed the suit in O.S.No.180 of 2006 in the Court of the XII Additional Chief Judge (FTC), City Civil Court, Hyderabad for specific performance of the said tampered agreement. The father of the plaintiffs 4 to 6 filed a written statement in the said suit supporting the case of P.Venkatshwar Rao, the plaintiff in the said suit. He had further pleaded in his written statement filed in the said suit that the suit in O.S.No.39 of 2003 could not be seriously pursued by him as the Eastern portion of the said property rightly belonged to the plaintiff, i.e., P.Venkateshwar Rao. By taking the said stand in O.S.No.180 of 2006, the deponent of the affidavit under reply i.e., the father of the plaintiffs 4 to 6 had given up his rights over the agreements of sale dated 31.03.1999 and 02.06.1999 and the oral agreement dated 05.10.1999. In the circumstances, the sole defendant had negotiated afresh with the father of the plaintiffs 1 to 3. Pursuant thereto, on 19.08.2009, the sole defendant had registered a sale deed vide document No.2437 of 2009 in respect of 942 square

yards in favour of plaintiffs 1 to 3 and also an agreement of sale-cum-GPA, vide document no. 2439/2009 in respect of 195 square yards bearing premises No. 8-2-293/82/A/172/2, 3 & part of 8-2-293/82/A/171/2 and 3 171/283 in favour of plaintiffs 1 and 2. The allegation that the subject matter of the property in the said registered sale deed/agreement of sale cum G.P.A. covers the way/passage to the property of G.Shivender Reddy, is not correct. The plaintiffs 4 to 6 and their guardian had consciously allowed the suit to be dismissed for default.

9. Now the points that arise for determination in this appeal are:

- 1. Whether the appellants/plaintiffs 4 to 6 have made out valid and sufficient grounds and have shown sufficient cause for setting aside the order of dismissal for default dated 18.08.2009 passed in the suit by the Court below and for restoration of the suit to its original position?**
- 2. Whether the order impugned is unsustainable under facts and in law?**
- 3. To what relief?**

10. POINTS:

10.1 The pleadings of both the sides and the contentions of the learned senior counsel appearing for both the sides are already stated supra, in detail. I have gone through the copies of depositions of G.Shivender Reddy, the father and next friend of plaintiffs 4 to 6 and that of the counsel Sri Shyamsunder Murthy. I have given earnest consideration to the facts and submissions.

10.2 In the instant case on hand, the sole defendant in the suit died and her estate is being represented by an Officer appointed by the Court. The plaintiffs 1 to 6 brought the suit for specific performance. The plaintiffs 1 to 3, who are minors by then are the children of one brother. He is the natural guardian and next friend of the said minors in the suit. The plaintiffs 4 to 6 who are also minors by then are the children of the other brother, who is also the natural guardian and next friend of the said minor plaintiffs in the suit. Sri Shyamsunder Murthy is the Advocate for the plaintiffs. With

the consent of the natural guardian and next friend of the plaintiffs 1 to 3, he had given up his vakalat in the suit for the plaintiffs 1 to 3. The said learned counsel had filed before the court below a petition in I.A.No.167 of 2007 for permission to withdraw his vakalat filed on behalf of the plaintiffs 4 to 6 and the said petition was allowed by the trial Court. However, no material is placed before this Court to show as to whether the said counsel had issued any registered notices to the father and next friend of the minor plaintiffs 4 to 6 before filing the aforementioned application before the trial Court. Though the counsel had alleged in his affidavit filed in support of I.A.No.167 of 2007 that he had addressed letters, the copies of those letters are not marked and the acknowledgments, if any, received by the counsel to show that the letters addressed by him are served on the father and next friend of the plaintiffs 4 to 6 are also not filed into court and not exhibited. From a perusal of the record, it appears that in I.A.No.167 of 2007 notices/summonses were ordered by the court below to be served on the plaintiffs 4 to 6. In the cross-examination of the learned advocate, the following points were elicited: *'Ex.C-1 to C-3 are the summonses sent to the respondents in I.A.No.167/07. Exs.C-1 to C-3 do not bear the signatures of Shivender Reddy, the father and next friend of plaintiffs 4 to 6. Witness adds—the said summons bear the signature of G.Vikas Reddy, the 4th plaintiff. I did not accompany the process server while summons were served under Exs.C-1 to C-3. It is not true to say that G.Vikas Reddy was a minor in the year 2007 and that the signatures appearing in Exs.C-1 to C-3 do not belong to him and that the respondents 4 to 6 (plaintiffs 4 to 6) have not received summons in I.A.No.167 of 2007.'* The date of birth of Vikas Reddy is 18.10.1991 is not in dispute. He was 16 years of age by the year 2007 when the summonses were allegedly served upon him and therefore, he was a minor. Therefore, there is no valid service of summons insofar as the 4th plaintiff is concerned. The plaintiffs 5 and 6, who are also minors by then, are being represented by their father and next friend. There was no service of summonses or notices upon them. Thus, the said application was disposed of without service of summonses or notices. Therefore, before according permission to the counsel to withdraw his vakalat filed on behalf of the plaintiffs 4 to 6, the plaintiffs 4 to 6 were not put on notice by the court. Simply by noting in the orders that R4 to R6 are called absent and are set *ex parte* and that the plaintiffs 1 to 3 are not opposing the application, that application was allowed by a cryptic order. Even after allowing the said petition on 11.10.2007, the trial Court did not order notices to the plaintiffs 4 to 6 before proceeding further in the suit. Ultimately, the suit was

dismissed for default on 18.08.2009. In the absence of any material to show that the notices sent by the Court to the plaintiffs 4 to 6 on the application filed by their counsel for permission to withdraw the vakalat are served and in the further absence of any material to show that any notices were ordered by the court to the plaintiffs 4 to 6 after allowing the said petition filed by their counsel to withdraw the vakalat, it cannot be said that the plaintiffs 4 to 6 had knowledge of the orders on the interlocutory application filed by the counsel and the dismissal of the suit for default on 18.08.2009. It appears that the father of the plaintiffs 4 to 6 was examined as a court witness (CW1) and we find only cross-examination in his deposition copy filed before this Court and no examination-in-chief by the Court. However, his affidavit filed in support of the petition is available on record. He had maintained his stand in his cross-examination. Be that as it may.

10.3 It is the specific case of the plaintiffs 4 to 6 that on enquiries made by their father and next friend about the status of the present suit, he had learnt that the counsel on record Sri Shyamsunder Murthy has determined his Vakalat without informing the deponent and that when the suit came up before the in-charge Court, it was dismissed for default on 18.08.2009. Thus, according to plaintiffs 4 to 6, their father came to know about the dismissal of the suit on 07.09.2009 on taking assistance of the advocate and on making enquiries about the status of the suit and that the learned counsel Sri Shyamsunder Murthy or the brother of the deponent did not inform the deponent about the dismissal of the suit. It is their further case that the brother of their father, for vested reasons and unlawful gains, had joined hands with the opposite parties.

10.4 The defence of the plaintiffs 1 to 3 is that the father of the plaintiffs 4 to 6 filed a written statement in the suit in O.S.No.180 of 2006 supporting the case of P.Venkatshwar Rao, the plaintiff in the said suit and that in the said suit, he had further pleaded in his written statement that the suit in O.S.No.39 of 2003 could not be seriously pursued by him as the Eastern portion of the said property rightly belonged to the plaintiff, i.e., P.Venkateshwar Rao and that by taking the said stand in O.S.No.180 of 2006, the deponent i.e., the father of the plaintiffs 4 to 6 had given up his rights over the agreements of sale dated 31.03.1999 and 02.06.1999 and the

oral agreement dated 05.10.1999 and that in the circumstances, the sole defendant negotiated with the father of the plaintiffs 1 to 3 and that pursuant thereto, on 19.08.2009, the sole defendant got registered a sale deed vide document No.2437 of 2009 in respect of 942 square yards in favour of plaintiffs 1 to 3 and also an agreement of sale-cum-GPA, vide document no. 2439/2009 in respect of 195 square yards bearing premises No.8-2-293/82/A/172/2, 3 & part of 8-2-293/82/A/171/2 and 3 171/283 in favour of plaintiffs 1 and 2.

10.5 It is pertinent to note that the suit was dismissed for default on 18.08.2009. The plaintiffs 4 to 6 are only aggrieved of such dismissal. However, the plaintiffs 1 to 3 had obtained a registered sale deed on the very next day, i.e., 19.08.2009 in respect of 942 square yards in their favour and also an agreement of sale-cum-GPA in respect of 195 square yards. The trial Court instead of examining the material and vital aspect as to whether sufficient cause was shown for the absence of the father and next friend of the plaintiffs 4 to 6 on 18.08.2009, the day on which the suit was dismissed for default, had unnecessarily entered into a discussion about the other suit O.S.No.180 of 2006 filed by P.Venkateshwar Rao and the pleadings therein and other extraneous circumstances, which are not relevant for consideration. The court below did not at all consider that the plaintiffs 4 to 6 were minors as on the date of the institution of the suit and that as on the date of dismissal of the suit, the 6th plaintiff is still a minor. Moreover, the estate of the deceased sole defendant is being represented by an Officer of the court. It is not borne out by record as to how a fresh agreement could be entered into by the officer of the court after the dismissal of the suit as his tenure comes to an end with the dismissal of the suit, provided he was appointed by orders made in that suit. It is also unexplained as to whether a fresh agreement could have been entered into in respect of the estate of the deceased defendant by the Officer of the court without the permission of the Court. When there are no legal representatives for the deceased sole defendant why the State was not brought on record as a party keeping in view the principle enshrined in the doctrine 'escheat' is also not borne out by record. The fact that the documents were executed in favour of the plaintiffs 1 to 3 immediately after the dismissal of the suit would show that there is something more than that meets the eye. Having regard to the reasons, this Court finds that sufficient cause is made out and sufficient grounds are also made out for non-appearance of the father and natural guardian of the plaintiffs 4 to

6 before the trial court on 18.08.2009. As a sequel, it must be held that the suit is to be restored to file after setting aside the order of dismissal for default made in the suit.

11. Viewed thus, this Court finds that the order impugned is unsustainable both under facts and in law and is liable to be set aside.

12. In the result, the Civil Miscellaneous Appeal is allowed and the impugned order dated 18.11.2013 passed in I.A.No.143 of 2009 in O.S.No.39 of 2003 is set aside and the said application is hereby allowed and the order dated 18.08.2009 of the court below dismissing the suit for default is set aside and the suit is restored to file to its original number. Since there is a conflict of interest between plaintiffs 4 to 6 on one hand, who are interested in prosecuting the suit, and the plaintiffs 1 to 3 on the other, who are disinterested in prosecuting the suit, it is needless to mention that the plaintiffs 4 to 6 may be given an opportunity to transpose the plaintiffs 1 to 3 as defendants 2 to 4. The court may also, if necessary, direct the State to be impleaded as a party to the suit as the deceased sole defendant had not left behind any legal representatives, though she had left behind some immovable properties and the Government may have claim under the principle of 'escheat'.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

M. Seetharama Murti, J

14th October 2015

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