

HIGH COURT LEGAL SERVICES COMMITTEE, CHENNAI

Lok Adalat-II organised by the High Court Legal Services Committee

Friday, the 11th day of November, 2016

LOK ADALAT AWARD

(Chapter VI and u/s 21 of Legal Services Authorities Act, 1987)
Presided over by

The Hon'ble Mr. Justice M. THANIKACHALAM (Retd.)

Members:

Mr. S. Ramalingam

Mr. C. T. Mohan

S.A.No.455 of 2010

(Second Appeal is filed under Section 100 of the Civil Procedure Code against the erroneous common judgment and decree passed in A.S.No.131 of 2003, dated 24.09.2004 on the file of District Judge, Perambalur in confirming the judgment and decree passed in O.S.No.608 of 1995, dated 10.06.2003 on the file of District Munsif, Perambalur).

K.K.Syed Ismail

..Appellant/Appellant/Plaintiff

/vs/

1.Kanagaraj

2.Periyasamy

3.Govindaraj

4.Nallamuthu @ Omayam

5.Chinnathambi

6.Mookkayee

7.Velmurugan

8.Dharmaraj

..Respondents/Respondents/Defendants

This case is taken up for consideration by perusing the records. Both the parties and their respective counsel are absent.

JUDGMENT

The appellant/plaintiff (K.K.Syed Ismail) elsewhere in 1995 had filed a suit against eight defendants claiming declaration and mandatory injunction in respect of the suit properties. After contest, the learned Trial Judge dismissed the prayer for declaration and granted the relief of mandatory injunction. Aggrieved by the said order, the defendants preferred a first appeal, wherein the appeal was allowed setting aside the order of the Trial Court and in conclusion dismissing the entire suit, against which, the plaintiff filed the second appeal.

2. This case was transferred to Lok Adalat as if everything is all right as if there is a possibility of settlement. Our anxiety and curiosity to know why a case of the year 2005 is still pending for more than three decades, revealed certain facts that the suit itself has abated and cause of action does not survive and there is no useful purpose keeping the case itself. Originally when the second appeal was filed, there was an inordinate delay. Considering justice, should be done giving opportunity that inordinate delay was condoned on condition of payment of cost. After that, the case was taken on file.

3. As seen from the notes papers maintained by the Hon'ble High court, the first respondent reported dead and since there are other defendants, the appeal was allowed to continue, whether the legal heirs of the first defendant is brought on record or not. It is also recorded by the Hon'ble High Court as represented by the counsel on record that the sole appellant also died then ordering for taking steps on 18.03.2013. Thereafter, at request, the case was adjourned to some other dates and as revealed from the papers, no steps have been filed bringing the legal heirs of the sole plaintiff. At this stage, the case has been transferred to Lok Adalat.

4. Because of the above reasons, the plaintiff expired and no legal heirs are brought on record, we are unable to issue notice also to the plaintiff. Further, considering the lapse of period and limitation where, further cause of action does not survive, the suit itself abated. Order 22, Rule 3, sub clause (2) contemplates what is the procedure to be adopted in case of sole plaintiff died and if the legal heirs of the sole plaintiff were not brought on record within the time prescribed. Here within time the legal heirs not brought on record. Ultimately, the suit abates, as mandated by the Civil Procedure Code, "shall abate". Therefore, there is no possibility of settlement or issuing notice etc., and in this view, if this suit is kept pending irrespective of procedure followed by the Forum, no purpose survives. Hence, the second appeal is dismissed as abated. No costs.

sd/-
Judge

sd/-
Member

sd/-
Member

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1.The District Judge, Perambalur.

2.The District Munsif, Perambalur.

3.The Secretary, High Court Legal Services Committee, Chennai.

4.The Section Officer, V.R.Section, High Court, Madras.

5.The Section Officer, Lok Adalat Section, High Court, Madras.

gj (co)
krd 7/12

S.A.No.455 of 2010



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