

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE M.M.SUNDRESH

O.S.A.No.27 of 2016

1.B.Narasimha Sastry alias B.Babu Narasimha Rao,
2.B.Babu Kesava Rao,
3.B.Vishnu Varadhan
4.B.Madhusudan
5.B.Rama Krishna Bai ... Appellants /Applicants 1
to 4/Plaintiffs 1 to 4
and Proposed 6th Plaintiff

versus

1.The Purasawalkam Permanent Fund Limited,
represented by its Managing Director,
No.173, Vellala Street,
Purasawalkam, Chennai 600 084.

2.M/s.Balajee & Co.,
Auctioneers,
No.160, Thambu Chetty Street,
Chennai 600 001.

3.Pramila Jain,
Old No.134, New No.210,
I Floor, N.S.C.Bose Road,
Sowcarpet, Chennai 600 079.

4.Prakash Gold Palace,
represented by its Proprietor
Prakash Chand Jain,
Old No.134, New No.210,
I Floor, N.S.C.Bose Road,
Sowcarpet, Chennai 600 079.

5.M/s.Jothi Jewellers,
represented by its Proprietor,
Lalith Kumar,
Old No.134, New No.210,
Ground Floor, N.S.C.Bose Road,
Sowcarpet, Chennai 600 079.

6.M/s.Avanthika Jewellers,
represented by its Proprietrix,
Mrs.Avanthika,
Old No.134, New No.210,
Ground Floor, N.S.C.Bose Road,
Sowcarpet, Chennai 600 079.

7.M/s. R.D.Agencies,
represented by its Proprietor,
Mr.B.Venkatarathinam,
Old No.134, New No.210,
Ground Floor, N.S.C.Bose Road,
Sowcarpet, Chennai 600 079.

8.M/s.S.S.Jewellery,
represented by its Proprietor
Ugam Chand Jain,
Old No.134, New No.210,
First Floor, N.S.C.Bose Road,
Sowcarpet, Chennai 600 079.

9.M/s.S.S.Refinery
represented by its Proprietor
S.Ramesh Salunkha
Old No.134, New No.210,
First Floor, N.S.C.Bose Road,
Sowcarpet, Chennai 600 079.

10.M/s.Kaizen Impex
represented by its Proprietor
M.A.Mubarak,
Old No.134, New No.210,
I Floor, N.S.C.Bose Road,
Sowcarpet, Chennai 600 079.

11.M/s.Anisha Overseas Services
represented by its Proprietor
I.A.Shaik Ismail Jelani,
Old No.134, New No.210,
I Floor, N.S.C.Bose Road,
Sowcarpet, Chennai 600 079.

12.M/s.Bansali & Co.,
represented by its Proprietor
Praveen Agra,
Old No.134, New No.210,
I Floor, N.S.C.Bose Road,
Sowcarpet, Chennai 600 079.

13.Mrs.Hilda,
Correspondent
Kinder Garden School
Old No.134, New No.210,
I Floor, N.S.C.Bose Road,
Sowcarpet, Chennai 600 079.

.. Respondents/Respondents
/Defendants

Appeals filed under Order 36 Rule 9 of Original Side Rules,
r/w Clause of the Letter Patent against the Order and decree
dated 02.11.2015 made in A.No.6192 of 2015 in C.S.No.160 of
2005, on the file of this Court.

For Appellants.. Mrs.Chitra Sampath
Senior Counsel for Mr.T.S.Baskaran

For Respondents.. Mr.K.Sridhar
for M/s.K.Sridhar Associates for R.1
Mr.D.Dharmachand Jain
and Mr.S.Balasubramanian for R.3 and R.4

No appearance for others.

J U D G M E N T

(Judgement of the Court was delivered by The Hon'ble Chief
Justice)

Admit.

2. Learned counsel for the respondent accepts notice. By
consent of parties, the appeal is taken up for final disposal.

3. The appeal is directed against the impugned order dated
02.11.2015, rejecting the application for impleadment on the
ground that there is no application for condonation of delay for
setting aside the abatement.

4. We may notice that the suit is at the final stage for
hearing. The suit had been filed for setting aside the auction
sale alleged to have been held on 11.03.2002 by the second
respondent at the instance of the first respondent for recovery
of amounts due under the mortgage deed executed in favour of the
first respondent by appellants Nos. 2 to 5 and for redemption of
the mortgage.

5. It is towards the end of the trial that the appellants have sought to implead one Mrs.B.Ramakrishna Bai, as the 6th plaintiff in the suit. The reason is that the third plaintiff who was unmarried passed away and the father was recorded as his/her legal representative as per the order of the Court dated 15.03.2012. It appears that an objection was raised to the non-impleadment of the mother and it is to obviate that objection, the application came to be filed.

6. The aforesaid application was opposed by the 3rd and 4th respondents.

7.It is not in dispute that the mother would be the natural legal heir, being a Class-I legal heir. Thus, undoubtedly, the appellants as plaintiffs had committed a mistake by not impleading her. In fact, the finding in the impugned order says as much, but the rejection of the application, in our view, is on extremely technical ground.

8.We were concerned with the aspect of any delay which may occur in the trial, but learned senior counsel for the appellant on instructions had stated on 23.02.2016 that the mother of the deceased was being brought on record only to obviate the objection of the defendants on account of non-impleadment and she would not step in the box or make any further deposition. Thus, the question of delaying the suit does not arise. The cause of action in any case would survive in view of the impleadment of the legal heir, as also the other parties, being the plaintiffs.

9. We are thus inclined to allow the appeal, setting aside the impugned order dated 02.11.2015, by allowing A.No.6192 of 2015 in C.S.No.160 of 2005. The delay in making the application is condoned and the abatement is set aside.

10. The Original Side Appeal is allowed in the aforesaid terms, leaving the parties to bear their own costs. The amended memo of parties be filed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

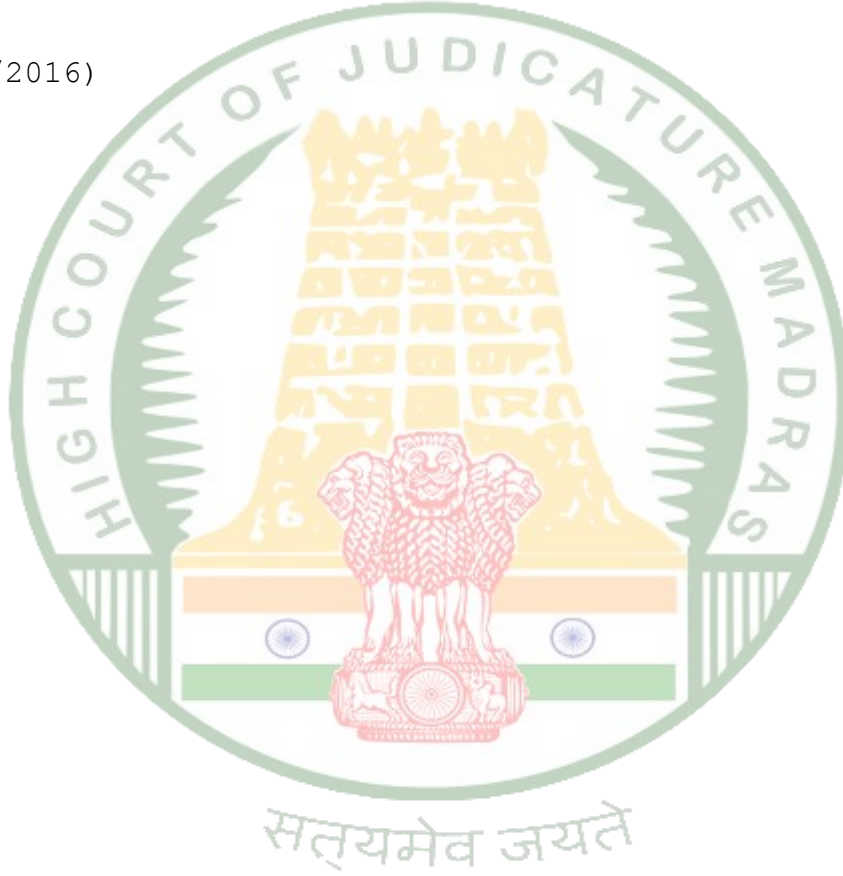
To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1cc to Mr.T.S.Baskaran, Advocate, S.R.No.18035
+1cc to Mr.K.Sridhar Associates, Advocate, S.R.No.17868
+2cc to Mr.S.Balasubramanian, Advocate Sr.17822,17821

O.S.A.No.27 of 2016

gj (CO)
srg (04/04/2016)



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