

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2017

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

SECOND APPEAL NO.321 OF 1995

1.Thangammal (died)
2.Ramachandran
3.Tulasimani

.. Appellants

(Appellants 2 and 3 are brought
on record as LR of the deceased sole
appellant and transposed the record
them as appellants 2 and 3 as per
order of Court dated 06.11.2003
made in C.M.P.No.15989 of 2003
by PDDJ)

/versus/

V.Ramasamy (died)
C.Mayilsamy

(Substituted in the place of
sole respondent vide order of Court
dated 24.06.2014 made in C.M.P.No.
338 of 2011 in S.A.No.321/95)

...Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 22.07.1993 made in A.s.No.95 of 1991 on the file of the Principal Subordinate Judge, Coimbatore, confirming the judgment and decree dated 08.01.1991 made in O.S.No.1828 of 1989 on the file of the II Additional District Munsif Court, Coimbatore.

For Appellant :Mr.P.Saravana Sowmiyan
For Respondents:M/s.Srinath Sridevan

J U D G M E N T

On 10.01.2017, this Court has passed the following orders.

"The learned counsel for the appellant has not taken steps to bring the legal representatives of the deceased respondent. However, he submits that a purchaser by name Mr.Mayilsamy has taken out the application to get himself impleaded as respondent, and that application has also been allowed by this Court on 24.06.2014.

The learned counsel for the appellant says that he has no instructions from his client regarding the deceased respondent Ramaswamy and the counsel for the deceased respondent has not responded so far. As a last chance the matter is posted to 31.01.2017. If the appellant is not ready to pursue further by taking out necessary application for impleading LR's of deceased respondent, the appeal will stand dismissed."

2. Today, the learned counsel for the appellant represents that he is not able to trace out the Legal heirs of the first respondent V. Ramasamy and the appellant proposed to take out an application under Order XXII, Rule 4(A) of CPC to appoint an Administrator-General or an Officer of the Court or such other person as this Court think fit to represent the deceased sole respondent.

3. When this Court passed the question to the learned counsel for the appellant What is the necessity to resort to Order XXII Rule 4(A) of CPC and Whether it is applicable to the facts of the case?. While one Mayilsamy has been impleaded as respondent being the party interested in the estate under dispute, the learned counsel appearing for the appellant could not able to enlight this Court.

4. The appeal in hand was earlier dismissed by this Court on 10.01.2006 and against which, a Special Leave Petition was allowed by the Hon'ble Supreme Court on a technical ground for non-formulating Substantial Questions of Law and it was remanded back to this Court to formulate Substantial Questions of Law as contemplated under Section 100 of Civil Procedure Code and to proceed further. Now, it is brought to the notice of the Court by the learned counsel appearing for the respondent that the contesting respondent V. Ramasamy, appellant in Civil Appeal No. 2634 of 2009 before the Hon'ble Supreme Court, died on 22.01.2008 much earlier to the date on which, the Civil Appeal was remanded back to this Court by the Hon'ble Supreme Court.

5. In the above said circumstances, I see no genuine reason to keep this appeal pending before this Court. Hence, the Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge,
Coimbatore.

2.The I Additional District Munsif Court,
Coimbatore.

Copy to:1. The Record Clerk,
VR Section, High Court, Madras.

2. The Section Officer, Supreme Court Section,
High Court, Madras.

+1cc to Mr.P.Saravana Sowmiyan, Advocate, S.R.No.6160

+1cc to Mr.Srinath Sridevan, Advocate, S.R.No.7077

AK(CO)

EU 27.2.17

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