

CMP.No.4244 of 2018

in

S.A.No.1731 of 2001

P.RAJAMANICKAM.J.,

This petition has been filed by the appellant to implead the legal representatives of the first respondent.

2. According to the petitioner/appellant, the first respondent died on 27.09.2003 leaving behind the respondents 2 to 7 as his legal representatives. His further case is that since already the respondents 2 to 5 are on record, the appeal will not abate against the first respondent and hence he prayed to allow the petition.

3. The respondents opposed this petition by filing counter affidavits. According to them, the first respondent died on 27.09.2003 leaving behind the respondents 2 to 7 as his legal representatives and the said fact was brought to the knowledge by the learned counsel for the appellant through the memo dated 20.11.2017 and even thereafter, the appellant has not filed a petition to implead all the legal heirs of the first respondent within the prescribed time and hence, the appeal against the respondents 6 and 7 would abate.

4. Heard Ms.U.Sababathy Manonmani for M/s.V.Ragavachari, V.Srimathi and V.Lakshmi Narayanan, learned counsel for the petitioner and M/s.K.Hariharan and P.Thirupurasundari, learned counsel for the respondents.

5. The learned counsel for the petitioner has submitted that eventhough the first respondent died on 27.09.2003, some of his legal heirs are already on record as respondents 2 to 5, the appeal will not abate, on the ground that, the present petition has been filed belatedly to implead the respondents 6 and 7 also as his legal representatives.

6. Per Contra, the learned counsel for the respondents would submit that since the present petition has not been filed within 90 days from the date of death of the first respondent, the present petition is not maintainable against the respondents 6 and 7. In support of his contentions, he relied upon the following decisions:

(i) Ramagya Prasad Gupta and Others /Vs/ Murli Prasad and Others - AIR 1972 SCC 1181

(ii) Shahazada Bi and Others /Vs/ Halimabi (Since Dead) by her LRs- (2004) 7 SCC 354

(iii) N.Khosla /Vs/ Rajlakshmi (Dead) and Others- (2006) 3 SCC 605.

7. In ***Ramagya Prasad Gupta and Others /Vs/ Murli Prasad and Others*** (cited supra), the suit was instituted for dissolution of a partnership, a preliminary decree was passed. On appeal, the High Court allowed the appeal and dismissed the suit for dissolution of the partnership. The plaintiff filed further appeal before the Hon'ble Supreme Court on Special Leave. During pendency of the said appeal before the Hon'ble Supreme Court, the 13th defendant died and his legal representatives were not brought on record within the period of limitation prescribed. Under the said circumstances, the Hon'ble Supreme Court has held that the entire appeal has to be dismissed as abated.

8. In ***Shahazada Bi and Others /Vs/ Halimabi (Since Dead) by her LRs*** (cited supra), one of the defendants died. LRs of the said deceased defendant not brought on record. Hence, the suit was dismissed against such defendant as abated. The Hon'ble Supreme Court has held that where the absence of LRs prevents the court from hearing the appeal as against the other respondents, then the appeal abates in *toto*.

9. In ***N.Khosla /Vs/ Rajlakshmi (Dead) and Others*** (cited supra) the Hon'ble Supreme Court has held that in case of a joint and inseverable decree if the appeal abated against one or the

other the same cannot be proceeded with further for or against the remaining parties as well.

10. In this case, the facts are totally different. In this case, the first respondent died and some of his legal representatives are already on record as respondents 2 to 5. Through this petition, the appellant made a request to implead the other legal heirs who were not already on record.

11. At this juncture, it would be relevant to refer to the decision in ***Custodian of Branches of Banco -Vs. Nalini Bai Naique*** - AIR 1989 SC 1589 : 1989 SCR (2) 810, wherein the Hon'ble Supreme Court has observed as follows:

" In Daya Ram and Others /vs/ Shyam Sundari [1965] 1 SCR 231 this Court recognized the principle of representation of the estate by some heirs, where the defendant died during the pendency of the suit to enforce claim against him and all the heirs are not brought on record within time. This Court held that if after bonafide inquiry, some, but not all the heirs, of a deceased defendant, are brought on record the heirs so brought on record represent the entire estate of the deceased and the decision of the Court in the absence of fraud or collusion binds even those who are not brought on record as well as those who are impleaded as legal representatives of the deceased defendant. In N.K.Mohd Sulaiman V. N.C.Mohd Ismail (1966) 1 SCR 937 this court rejected the contention that in a suit to enforce a mortgage instituted after the death of a Muslim, if all the heirs of the deceased were not impleaded in

the suit and a decree was obtained, and in execution the property was sold, the auction purchaser could have title only to the extent of the interest of the heirs who were impleaded and he could have no title to the interest of those heirs who had not been impleaded to the suit. The Court held, that those who were impleaded as party to the suit in place of the deceased defendant represented the entire estate as they had share in the property and since they had been brought on record the decree was binding on the entire estate as they had share in the property and since they had been brought on record the decree was binding on the entire estate. In the instant case Mrs.Nalini Bai had admittedly half share in the property left by the deceased defendant and as she was brought on record within time, she represented the estate of the deceased defendant and the suit could proceed on merit. In this view, the impleadment of other legal representatives at a subsequent stage could not affect validity of the proceedings. In the result, we allow the appeal and set aside the Judgment and order of the Judicial Commissioner dated 30.06.1972 and restore the order of the Trial Judge. Since trial of the suit has been delayed, we direct the trial court to make every effort to decide the suit expeditiously. The appellant is entitled to its costs throughout ".

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12. From the aforesaid decision, it is clear that the legal representatives who were already on record, can represent the entire estate of the deceased and hence, the appeal will not abate for non-impleadment of other legal heirs in time. Therefore, the contention of the respondents that the appeal against the respondents 6 and 7 has to be dismissed as abated, cannot be accepted.

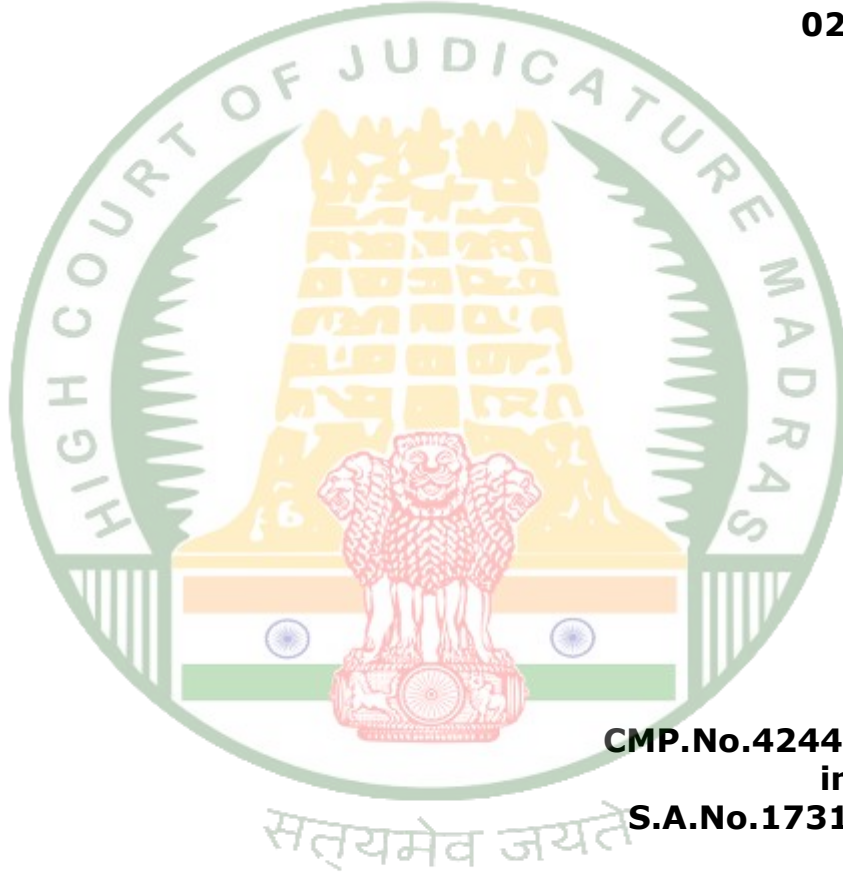
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13. In the result, this petition is allowed. No costs.

02.04.2019

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