

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 07.12.2018

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.No.558 of 2008

A.P.Devasuwigaran (deceased) ..Appellant/Plaintiff

1. Christy Jeyaseeli Ranjitham
Wife of A.P.Devasuwigaran
2. D.Pearly Jemima
3. D.Princy Andrea
4. D.Preethi Hannah ... Appellants 1 to 4

Vs

1. Mani
 2. Lenin ... Respondents/Defendants
- (Cause title accepted vide order of court dated 27.03.2008 made in M.P.1/2008 in S.A.SR.9872/2008)

Prayer: Second Appeal is filed under Section 100 of code of Civil Procedure to against the judgment and decree dated 26.07.2007 in A.S.No.18 of 2006 on the file of the Principal Sub-Judge, Chengalpattu in confirming the judgment and decree dated 02.12.2005 in O.S.No.3 of 1997 on the file of the District Munsif Court, Chengalpattu.

For Appellants : Mrs.V.Srimathi
For Respondents : Mr.P.Gopalan

JUDGMENT

The plaintiff who had successively lost his suit in O.S.No.3 of 1997 on the file of the District Munsif Court, Chengalpattu, and A.S.No.18 of 2006 before the first Appellate Court, had come before this Court with this appeal. The plaintiff was stated to have died on 20.10.2006 (which fact is stated in the affidavit filed in M.P.No.1 of 2008 in S.A.S.R.No.9872 of 2008 that was filed to accept the cause title and ordered by this Court on 27.03.2008).

2. In this case, arguments were heard briefly. Both sides have made submissions supporting their respective contentions in the suit. However, when the matter is taken up today, the learned counsel for the respondents brought to the notice of this Court that since the plaintiff had died on 20.10.2006, and given the fact that the judgment of the first Appellate Court was pronounced only on 26.07.2007, it might be possible that the appellant might have died before the First Appellate Court had reserved A.S.No.18 of 2006 for judgment.

3. Accordingly, this Court perused the notes paper in A.S.No.18 of 2006, with a view to ascertain if the plaintiff had died before the first appeal was reserved for judgement. In this pursuit, the following dates and events of proceedings as could be gathered from the notes papers of the first appellate court are relevant and are reproduced hereunder:

Sl.No.	Date	Events
1	16.10.2006	Written arguments filed by the appellant and the case was posted for the argument of the 2 nd respondent on 19.10.2006.
2	19.10.2006	Written arguments filed by the 2 nd defendant and the case is posted for judgment on 09.11.2006.
3	09.11.2006	The appeal suo-motu reopened for clarification on two specific aspects.

Thereafter, the decree of the courts below was sent for correction and then, further hearing had taken place as per the details in the tabulation given below:

Sl.No.	Date	Events
1	21.06.2007	At the request of the appellant counsel, adjourned to 28.06.2007.
2	28.06.2007	Heard the argument of the counsel for R1. At the request of appellant counsel adjourned to 05.07.2007.
3	05.07.2007	At the request of counsel for appellant again adjourned to 12.07.2007.
4	12.07.2007	Appellant side heard, already R1 side heard, R2 already submitted written arguments. Judgment by 26.07.2007.

5. On 26.07.2007, the judgment, which is now impugned in this second appeal, was pronounced. The notes paper details as extracted above would indicate that the plaintiff had died few months even prior to the closure of arguments. Therefore, the judgment of the first appellate Court in A.S.No.18 of 2006 is incompetent and invalid since the legal representatives were not brought on record.

6. Therefore, this Court allows the appeal and set aside the decree of the first Appellate Court and remanded it back to the first Appellate Court. The appellants are directed to bring themselves on record as per law and procedure prescribed. No costs.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

ssn

To:

1. The Principal Subordinate Judge,
Chengalpattu.

2. The District Munsif,
Chengalpattu.

+1 CC to Mr.V.Raghavachari, Advocate sr 84809.

+1 CC to Mr.P.Gopalan, Advocate sr 84363.

S.A.No.558 of 2008

VD(CO)

SP(22/04/2019)

GMV(12/11/2019)

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