

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	01.10.2018
Pronounced on	29.10.2018

Coram

The Honourable Ms.Justice P.T.ASHA

C.R.P(NPD)No.64 of 2005

and

M.P.No.376 of 2005

1.G.V.Mohanakrishnan
2.G.V.Sudhakar
3.G.V.Anandakrishnan
4.G.V.Kothandaraman
5.B.Indumathy
6.R.Padmavathy
7.R.Gajalakshmi

....Petitioners/Respondents/Defendants

Versus

Shri.Prasanna Vinayagar Temple Trust
Rep. by its Hereditary Trustee,
Now Rep. by its Present Managing Trustee
K.A.Murugappan

...Respondent/Petitioner/Plaintiffs

This Civil Revision Petition is filed under Section 115 of C.P.C against the order and decreetal order of the V Assistant City Civil Court at Madras in Memo in I.A.Nos.22856 & 22857 of 2003 in I.A.Nos.7322 & 7323 of 2003 in O.S.No.826 of 1996 dated 03.11.2004.

For Petitioners : Mr.V.Lakshminarayanan

For Respondent : Mr.B.K.Sreenivasan

O R D E R

This Civil Revision Petition is filed challenging the order passed by the learned V Assistant City Civil Judge, Chennai in a Memo filed by the respondent/plaintiff in I.A.Nos.22856 & 22857 of 2003 in I.A.Nos.7322 & 7323 of 2003 in O.S.No.826 of 1996 dated 03.11.2004. The defendants are the revision petitioners.

2. Parties are referred to in the same array as in the suit. The narration of the events preceding the filing of the said Memo is narrated hereinbelow:

(a) The plaintiff temple trust was represented by its hereditary trustee one Thaiyalnayagi Ammal who had filed a suit in O.S.No.826 of 1996 on the file of the V Assistant City Civil Court, Chennai for an ejectment of the defendants from the suit property together with a direction for payment of arrears of rent and damages. The defendants have filed their written statement and pending the suit, Thaiyalnayagi Ammal died on 11.06.2001. Followed by her death, the first defendant G.V.Nandagopal died on 07.07.2001. It is seen that the trustees had thereafter appointed the son of Thaiyalnayagi Ammal one K.A.Murugappan as the managing trustee and he appears to have taken an Application in I.A.No.19186 of 2001 to substitute his name in the place of her mother.

(b) In the meanwhile, the records reveal that on 09.07.2004, the counsel for defendants had given a letter informing the death of the first defendant to the counsel for plaintiff and on 26.07.2001, the defendants had given the address of legal representatives of the deceased first defendant to plaintiff's counsel. However, no steps were taken to implead the legal representatives of the deceased first defendant. Meanwhile, since no steps were taken to bring on record the legal representatives of the deceased first defendant, O.S.No.826 of 1996 and I.A.No.19186 of 2001 came to be dismissed on 24.10.2002. It is seen that on 14.11.2002, the plaintiff had taken out the Applications in I.A.Nos.7322 & 7323 of 2003 to restore I.A.No.19186 of 2001 and the suit in O.S.No.826 of 1996 to file respectively.

(c) The records would reveal that though notice was issued on 04.04.2003 in the above two Interlocutory Applications, the plaintiff did not take any steps to issue notice to the defendants as a result of which these Interlocutory Applications got dismissed for default on 28.07.2003. On the dismissal of these Applications, plaintiff had filed I.A.Nos.22856 & 22857 of 2003 to restore I.A.Nos.7322 & 7323 of 2003 on file respectively. The said Applications were kept pending which prompted the defendants to file the Memo which is the subject matter of this revision calling upon the learned V Assistant City Civil Judge, Chennai to pass appropriate orders upon the death of the first defendant.

(d) Since the suit cannot be restored against a dead person and the other defendants were not the legal representatives of the first defendant the plaintiff had come forward with a defence to the said Memo stating that though particulars about the death of first defendant and also the legal representatives of deceased first defendant were handed over to the counsel for

the plaintiff such a service was not proper as upon the death of Thaiyalnayagi Ammal the counsel had no right to represent the temple and therefore, defendants ought to have taken steps to serve K.A.Murugappan directly who had been in the interregnum, elected as managing trustee of the plaintiff temple trust.

(e) The plaintiff had also taken out a plea that the suit could be dismissed only against the deceased first defendant and not against the other defendants. Further, the plaintiff had also come forward with an explanation that they were unaware about the numbering of I.A.Nos.7322 & 7323 of 2003 and that is the reason for the said Interlocutory Applications being dismissed for default.

(f) The plaintiff would further contend that along with the Applications in I.A.Nos.7322 & 7323 of 2003, they had also taken out a Memo to record defendants 2 to 8 as the legal representatives of the deceased first defendant and therefore, the Court ought to have passed orders on the two Applications and the said Memo. The plaintiff would also contend that it was only the third defendant who was carrying on the business in the said premises.

3.1. The defendants had also filed a reply to the counter of the plaintiff wherein they have contended that the service of the notice about the death of the first defendant had been done in accordance with law as the notice was served on the junior counsel who appeared on behalf of the plaintiff temple trust and it is the very same counsel who continues to represent the plaintiff. Therefore, no exception could be taken regarding the service of the notice.

3.2. It was also clearly mentioned that even in the letter dated 26.07.2001, the defendants had clearly mentioned that it was one Mr.Radhakrishnan who was the Class I legal heir of the deceased first defendant and that defendants 2 to 8 are Class II legal representatives of the deceased first defendant. It was also pointed out that on receipt of the letter dated 26.07.2001, the counsel for the plaintiff by his reply dated 31.07.2001, requested the defendants to confirm as to whether G.V.Anandakrishnan was an only legal heir of the deceased first defendant. They had also contended that since it was a joint decree, the decree against one will operate against all.

4. The learned V Assistant City Civil Judge, Chennai by an order dated 03.11.2004, rejected the Memo on the ground that the defendants themselves had filed an Application in I.A.No.14669 of 2001 seeking permission to deposit the rents into Court and same was dismissed on 18.11.2002. In the light of the above, they could not contend that the suit has abated since necessary steps to implead the legal representatives of the deceased first defendant has not been taken. The learned Judge further directed the petitioners/defendants to argue I.A.Nos.22856 &

22857 of 2003. It is aggrieved by this order that the petitioners/defendants have preferred the above Civil Revision Petition.

5.1. Mr.V.Lakshminarayanan, learned counsel appearing on behalf of the defendants would contend that to date, the plaintiff had not taken any steps to implead the legal representatives of the deceased first defendant despite the fact that the defendants had intimated the plaintiff about the death of the first defendant and giving them all particulars. He would further submit that until such time as the abatement had not been set aside by reason of the death of first defendant, the order of abatement would continue and since the decree is a joint decree dismissal of the suit against one will enure to the other defendants as well.

5.2. He would also contend that in this state of affairs, the learned Judge was wrong in directing the defendants to argue the matter since the restoration application has been filed against the dead person. The learned counsel for the defendants would submit the following judgments in support of his contentions:

- State of Punjab Vs. Nathu Ram reported in AIR 1962 SCC 89
- Ratanchand Hirachand Vs. Askar Nawaz Jung reported in AIR 1976 ANDHRA PRADESH 112

6. Mr.B.K.Sreenivasan, learned counsel appearing on behalf of the plaintiff would contend that since the original trustee had died, steps were taken to substitute the new trustee in her place. He would further argue that under the provisions of Order XXII Rule 2 of C.P.C, where there are more than one defendant and any of them dies and where the right to suit survives on the remaining defendants, then the Court should make an entry and proceed with the suit against the remaining defendants. He would argue that the cause of action survive on the remaining defendants and therefore, there was no abatement.

7. Heard the counsels on both sides and perused the records.

8. From a perusal of the records, it is clear that the plaintiff has not been diligently prosecuting the proceedings and the suit which was filed as early as in 1996 is yet to reach finality. Though details about the death of the first defendant along with the details of his legal representatives were given to the plaintiff within a few days of the death of first defendant, till date no steps have been taken to bring the legal representatives of the deceased first defendant on record. Similarly, though the plaintiff had immediately taken steps to file I.A.No.19186 of 2001 to substitute the hereditary trustee, there was no follow up at their end. As a result of which both

the suit in O.S.No.826 of 1996 and the Interlocutory Applications in I.A.No.19186 of 2001 came to be dismissed. The plaintiff had filed I.A.Nos.7322 & 7323 of 2003 to restore I.A.No.19186 of 2001 and O.S.No.826 of 1996 on file. After filing the said Applications, there has been no follow up by the plaintiff and it is seen that the plaintiff was not even aware of the said Applications being numbered and that the notices have ordered to the defendants. Even these Applications have been dismissed for default as early as on 28.07.2003, and thereafter, I.A.Nos.22856 & 22857 of 2003 have been filed to restore the Interlocutory Applications in I.A.Nos.7322 & 7323 of 2003 on file.

9. As rightly pointed by the counsel for the defendants as on date the suit cannot be restored against the first defendant because first defendant had died and his legal representatives have not been brought on record. The Restoration Applications filed in I.A.Nos.7322 & 7323 of 2003 cannot restore the suit which has already abated against the first respondent. The decree being a joint decree, the dismissal of the suit against one defendant will definitely operate in favour of the other defendants as well.

10. The learned V Assistant City Civil Judge, Chennai has clearly erred by stating that since the defendants had moved an Interlocutory Application in I.A.No.14669 of 2001 seeking permission to deposit the rental arrears into Court, they cannot contend that the suit has abated. The learned Judge had failed to appreciate the fact that despite being put on notice about the death of the first defendant and details of the legal representatives of deceased first defendant being furnished as early as on 26.07.2001, the plaintiff has deliberately not taken any steps to bring on record the legal representatives of the deceased first defendant and it is now over 17 years since the said Application was served on the plaintiff.

11. As rightly pointed by the Honourable Supreme Court in State of Punjab Vs. Nathu Ram reported in AIR 1962 SCC 89 where the decree is a joint decree the dismissal of the suit against one would automatically amount to the dismissal of the suit against the others. The defendants 2 to 8 are not the legal representatives of the deceased first defendant as they are only his siblings who are Class II legal representatives. The deceased first defendant's son, Mr.Radhakrishnan who is the Class I heir is very much available and the plaintiff has not taken any steps to bring him on record. The learned V Assistant City Civil Judge, Chennai on a total non application of mind, rejected the Memo and directed the defendants herein to participate in the arguments.

12. The learned V Assistant City Civil Judge, Chennai

cannot proceed to hear the Applications since the suit has already been dismissed as abated. The provisions of Order XXII Rule 2 of C.P.C would apply in a case where the legal representative of one of the many plaintiffs or defendants are already on record, then in such a situation, there will be no abatement and the legal representative who is already on record can be recorded as the legal representative of such plaintiff or defendant and permitted to proceed along with the other plaintiffs or defendants as the case may be. In the instant case, as regards the first defendant G.V.Nandagopal, his legal representatives are not parties to the suit and therefore, the right to suit does not enure to the siblings who are defendants 2 to 8. The order of the learned V Assistant City Civil Judge, Chennai suffers from an infirmity and therefore, the same is liable to be set aside.

13. In the result, this Civil Revision Petition is allowed and the order passed by the learned V Assistant City Civil Judge, Chennai in I.A.Nos.22856 & 22857 of 2003 in I.A.Nos.7322 & 7323 of 2003 in O.S.No.826 of 1996 dated 03.11.2004 is set aside. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

mrr

To

The V Assistant City Civil Court,
Madras.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No. 73955
+1cc to Mr.B.K.Sreenivasan, Advocate, S.R.No. 73745

C.R.P(NPD)No.64 of 2005

KJ(CO)
GN(06/12/2018)