

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2018

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

S.A. No.887 of 1998

The Ukkha Veetheeswaraswamy Temple
Kuthalam by its Hereditary
Trustee Sri-la-Sri Shanmuga
Desiga Gnanasambanda
Paramacharya Swamigal
Dharmapuram adheenam, mayiladuthurai taluk.

... Defendant/Appellant/Appellant

Vs.

1.A.Subramani

2.P.Subbaiyan ..Plaintiffs/Respondents/Respondents

Prayer:- The Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.40/96 dated 30.07.1996 on the file of Additional Sub Court, Mayiladuthurai confirming the judgment and decree in O.S.No.527/1990 dated 31.10.1995 on the file of District Munsif, Mayiladuthurai.

For Appellant : Mr.K.Chandrasekaran

For Respondents: M/s.A.Muthukumar for R1
Not ready on notice Reg.R2

J U D G M E N T

The respondents / plaintiffs filed a suit for permanent injunction as against the appellant / defendant temple. The Trial Court decreed the suit. Aggrieved by the same, the defendant temple filed appeal before the Lower Appellate Court. The Lower Appellate Court dismissed the appeal and confirmed the decree of the Trial Court. As against the concurrent findings, the present second appeal has been filed.

2.It is represented that the second respondent has died on 16.03.2000. Though the second respondent has died as early as in the year 2000, till date the Appellant temple has not taken any steps to bring on record the Legal Representatives of the second respondent.

3.The second appeal is filed by the appellant temple against the preliminary decree passed by the lower Court as well as the lower Appellate Court. Since the preliminary decree is under challenge and it is an indivisible decree, the said decree cannot be sustainable in respect of other respondents unless the legal heirs of the deceased second respondent is brought on record.

4.In support of his contentions, the learned counsel appearing for the appellant relied upon the following decisions:

(i) The decision of the Hon'ble Apex Court reported in (2003) 3 SCC 272 (Sardar Amarjit Singh Kalra (Dead) by Lrs. and others vs. Pramod Gupta (Smt) (Dead) by LRs. and others), the relevant portion of which reads as follows:

"30.The question, therefore, as to when a proceeding before the Court becomes or rendered impossible or possible to be proceeded with, after it had partially abated on account of the death of one or the other party on either side has been always considered to depend upon the fact as to whether the decree obtained is a joint decree or a severable one and 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. If otherwise, the decree is a joint and several or separable one, being in substance and reality a combination of many decrees, there can be no impediment for the proceedings being proceeded with among or against those remaining parties other than the deceased. As observed in Nathu Ram's case (supra) itself, the code does not itself provide for the abatement of the appeal against the other respondents even where, as against one such it has abated but it is only the Courts which have held that in certain circumstances the appeal also would abate against a co-respondent as a result of abatement against the deceased respondent. The same would be the position of an appeal vis-a-vis the appellants, as in the other cases. Order 22 Rule 4 also was considered not to provide for abatement of the appeal(s) against the co-respondents of the deceased respondent and it was specifically observed therein that to say that the appeals against them also abated in certain circumstances is not a correct

statement. It was held that the appeals against such other respondents cannot be proceeded against and, therefore, had to be dismissed, in certain circumstances."

(ii) The decision of this Court reported in 1973 (1) MLJ 351 (Muthuswamy alias Dronan, Journalist and another Vs. V.Venugopalan), the relevant portion of which reads as follows:

"9. One of us had to deal with a similar question in Innasi Udayar v. Chinnasami Raju. In that case, the suit for possession of certain lands was laid against 24 defendants, of whom the name of one was struck off during the pendency of the suit. The relief was claimed jointly against all the defendants without specifying which defendant was to surrender possession of which portion. The Trial Court decreed the suit directing the defendants on record to put the plaintiff in possession of the suit properties. The appeal preferred against that decree was dismissed and the decree of the trial court was confirmed by the first appellate court. Some of the defendants came up in second appeal to this court. During the pendency of the second appeal two of the appellants died, and their legal representatives were not brought on record within time, with the result, the appeal as against them had abated. The plaintiff-appellant took out an application praying for an order directing that the second appeal had abated and should, therefore, be dismissed. Having regard to the fact that the decree was joint and indivisible against all the defendants and as the decree did not provide that each of the defendants should put the plaintiff in possession of any particular portion of the suit land, it was held that the appeal by the other appellants could not be proceeded with as the appeal had abated against two of the appellants.

10. The question whether, consequent on the abatement of the appeal so far as one appellant is concerned the entire appeal should be held to have abated, has to be decided with reference to the nature of the relief claimed and the terms of the decree. If the decree is joint against several

defendants and if the decree has become final so far as one defendant is concerned on account of abatement on his death, the appeal by the other defendants should necessarily be held to be not maintainable because the success of the appeal would lead to the court coming to a decision which would be inconsistent with the decision between the deceased appellant and the respondent and that would lead to the court passing a decree which would be contrary to a decree which has already become final in respect of the same subject-matter between the deceased appellant and respondent. We have already pointed out that in the instant case the decree is joint both with regard to damages and injunction. It may be that the decree can be satisfied by executing it against the surviving first defendant so far as the money portion of the decree is concerned. That aspect, on which reliance was placed by the counsel for the first defendant, does not conclude the question, for, the other relief of injunction cannot be satisfied unless it is executed against both the defendants. As we have already pointed out, if the first defendant were to succeed in the appeal, such success can only be on the basis that there was no infringement of the plaintiff's copy right. Such a position would be contrary to the decision that has become final so far as the second defendant and the plaintiff are concerned. Such a conflict of decisions should not be permitted. This case satisfies the test No.(a) laid down by Raghubar Dayal, J., in State of Punjab V. Nathu Ram, the relevant portion of which we have extracted in paragraph 5 supra.

11. The counsel for the first appellant sought to contend before us that there is no common defence in this case and the second appellant can be held liable only if it is established that he had knowledge of the infringement of the copyright in relation to the publication of the drama in the journal. As we have pointed out already, the common defence of defendants 1 and 2 was that there had been no infringement of the copyright at all. Nowhere in the written statement of the

second defendant it was contended that he had no knowledge of the infringement of the copyright, when the drama was published in his journal in series and there had been no issue to that effect. From what we have extracted from a portion of the decree passed in this case, it will be clear that the entire trial proceeded on the common defence between defendants 1 and 2."

5. Since the appeal is against the decree of permanent injunction granted by the Trial Court which is an indivisible decree and the appellant temple has also not taken any steps to implead the Legal Representatives of the deceased second respondent and in view of the decisions cited supra, the second appeal is dismissed as abated. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Sub Court
Mayiladuthurai

2. The District Munsif
Mayiladuthurai.

3. The Section Officer, V.R. Section,
High Court, Madras. (2 copies)

+1cc to Mr.A.MUTHUKUMAR, Advocate, S.R.No. 19129

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PVS (CO)
TR(04/04/2018)

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