



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Monday, the Twenty Third day of April Two Thousand Eighteen

WEB COPY

PRESENT

The Hon`ble Mr.Justice M.SUNDAR

CMP(MD) No.1072 of 2017
IN
SA No.1259 of 2004

1 PALANICHAMY
2 NACHAMMAL
3 PAPPATHI
4 TIRUPATHI GOUNDER
5 ARUMUGAM
6 GANAPATHY

... PETITIONERS/RESPONDENTS

Vs

1 GANESAN
2 VELLAIAPPA GOUNDER
3 BALASHANMUGAM

... RESPONDENTS/APELLANTS

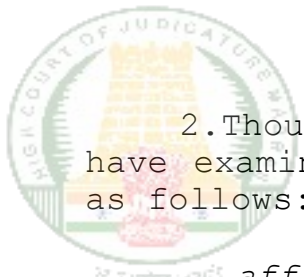
Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to dismiss the second appeal as abated against the respondents 3 and 4 under Order 22 Rule 3 and 4 of CPC.

PRAYER IN SA.No.1259 of 2004:

To prefer the Memorandum of Grounds of Second Appeal against the Judgment and Decree of the District Court at Karur, dated 27.02.2004 in A.S.No.104 of 2001, confirming the Judgment and Decree of the Principal District Munsif Court at Karur, dated 27.09.2001 in O.S.No.381 of 1997.

ORDER: This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr. Mr.ANAND CHANDRASEKAR, Advocate for M/s.SARVABHAUMAN ASSOCIATES, for the Respondents and the Petitioner is not appeared either in person or by an Advocate and the court made the following order:-

This petition has been taken out by the respondents in the main second appeal. There is no representation for petitioners in this Civil Miscellaneous Petition today. However, Mr.Anand Chandrasekar, learned Counsel for respondents herein, who is the Counsel for appellants in the main second appeal, is before me.



2. Though, learned Counsel for petitioner is not before me, I have examined this petition on merits. Prayer in this petition is as follows:

"For the reasons stated in the accompanying affidavit, it is prayed that this Honourable Court may be pleased to dismiss the second appeal as abated against the respondents 3 and 4 under Order 22 Rule 3 of C.P.C. and thus render justice."

3. I deem it appropriate to extract the proceedings in the main second appeal on 17.04.2018, and today ie., 23.04.2018.

Proceedings on 17.04.2018 reads as follows:

"Mr. Anand Chandrasekar of M/s. Sarvabhauman Associates (Law Firm) submits that appellants 1, 2 and respondent No. 3 are no more.

Learned Counsel submits that suitable applications have already been filed and seeks time to process and bring up the same before this Court.

List the matter on 23.04.2018."

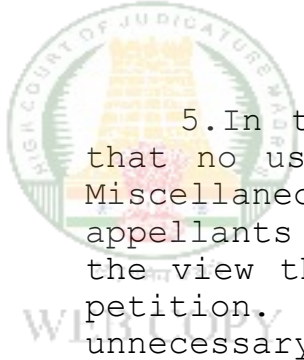
Proceedings on 23.04.2018, reads as follows:

"Read this in conjunction with and continuation of earlier proceedings of this Court dated 17.04.2018.

2. Today, Mr. Anand Chandrasekar, for M/s. Sarvabhauman Associates (Law Firm), seeks further time to ascertain the position with regard to appellants 1 to 4. In addition to this, learned Counsel submits that he is now been served with a memo by learned Counsel for contesting respondent that pending second appeal, respondents 5 and 6 are also no more. Therefore, learned Counsel submits that he would take out separate applications with regard to respondents 5 and 6 also. To be noted, I am informed that in the memo, date of demise and details of legal heirs have not been given.

3. Registry, to list this matter after summer vacation in the **3rd week of June, 2018.**"

4. Learned Counsel for appellants in the main second appeal (respondents) submits that suitable petitions have been filed with regard to demise of respondents 3 and 4 (besides appellants 1 and 2), vide S.R.Nos. 14606 to 14612 of 2018 dated 06.04.2018, the same is being processed and that the appellants would bring it up before this Court at the earliest and in any event by end of June 2018.



5. In the light of the aforesaid trajectory, I am of the view that no useful purpose would be served by entertaining this Civil Miscellaneous Petition. Furthermore, as the learned counsel for appellants has taken steps qua deceased respondents 3 and 4, I am of the view that the same has taken the wind out of the sails of this petition. I deem it appropriate to dismiss this petition as unnecessary, with liberty to the petitioners to revive this prayer by way of a separate C.M.P., if the aforesaid petitions are not numbered and brought up before this Court by end of June 2018.

sd/-
23/04/2018

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE DISTRICT JUDGE
KARUR
- 2 THE PRINCIPAL DISTRICT MUNSIF
KARUR

ORDER
IN
CMP (MD) No.1072 of 2017
IN
SA No.1259 of 2004
Date :23/04/2018

mr
SH/DD/GSR:22.05.2018:2P/3C