



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.09.2018
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(PD) (MD) .No.510 of 2016
and
C.M.P. (MD) .No.2186 of 2016

Magdoom Gnaniar Pallivasal
represented by its President,
Shekuduman,
Kadaiyanallur,
Tenkasi Main Road,
Thirunelveli District.

... Petitioner

Vs.

Abdul Kadher (died)

1. The District Collector,
Tirunelveli.
2. The Revenue Divisional Officer,
Tenkasi.
3. The Thasildhar,
Tenkasi.
4. The Commissioner,
Municipal Office,
Kadaiyanallur.

5. Mariyam Beeve
6. Mumthaj
7. Manzoor Elahai
8. Sheik Mubeeth
9. Akil Jaseem

Respondents 5 to 9 are legal representatives of
died Abdul Kadher.

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 14.12.2015 made in I.A.No.738 of 2013 in O.S.No.215 of 2013 on the file of Principal District Munsif Court, Tenkasi, reversing the same.

For Petitioner : Mr.Arumugam for
M/s. Ajmal Associates

For R1 to R4 : Mr.M.Karuppasamy
Government Advocate

<https://hcservices.ecourts.gov.in/hcservices/> FOR R5, 8 & 9

: No appearance

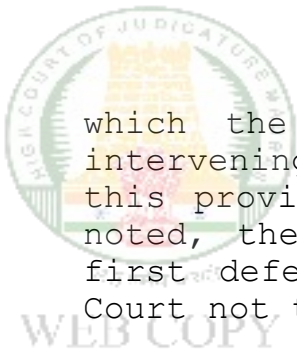
**ORDER**

The first defendant in O.S.No.215 of 2013 on the file of the Principal District Munsif, Tenkasi is the revision petitioner herein. The suit was filed by one Abdul Kadher. The suit was one for permanent injunction. The original plaintiff filed I.A.No.738 of 2013, seeking temporary injunction. The hearing in the said I.A. was completed on 08.10.2015 and the matter was posted for orders on 06.11.2015. The original plaintiff passed away on 14.11.2015. The learned counsel for the plaintiff filed a Memo to that effect on 16.11.2015. Without bringing the L.Rs. on record, the I.A. was allowed on 14.12.2015. Questioning the same, the first defendant Pallivasal has filed the present Civil Revision Petition.

2. The learned counsel appearing for the L.Rs. of the original plaintiff contended that the Civil Revision Petition is not maintainable, since the order impugned in this revision petition is appealable. He also invoked Order 22 Rule 6 of C.P.C., which states that there will not be any abatement by reason of death of either party after hearing and before pronouncing of orders.

3. Though both the submissions raised by the learned counsel for the L.Rs. of the original plaintiff have weight and force, I am of the view that the Civil Revision Petition ought not to be dismissed as not maintainable at the final hearing stage. The Civil Revision Petition was filed way back in 2016 and this Court had granted interim order also. The interim order has been in force till date. Hence, at the final hearing stage, it would not be appropriate on the part of this Court to relegate the revision petitioner to avail the appeal remedy.

4. This Court went through the 'B' - Diary extract furnished by the parties. It is true that orders were reserved on 08.10.2015 and the matter was posted for pronouncing of orders on 06.11.2015. But orders were not pronounced on that day and it was adjourned to 16.11.2015. Even on 16.11.2015, the order in the I.A. was not pronounced. The learned counsel for the plaintiff filed a Memo intimating the Court about the death of the plaintiff. The matter was adjourned to 03.12.2015. On the said date, the first defendant / revision petitioner herein filed an application calling upon the Court not to extend the interim order. But then the Court below extended the interim order earlier granted to 08.12.2015 and again to 10.12.2015 and again to 11.12.2015 and finally, only on 14.12.2015, the impugned order was pronounced. If the Court below had pronounced the order in I.A.No.738 of 2013 on 16.11.2015, then the demise of the original plaintiff on 14.11.2015 would not affect such an order. But the Court below did not pass orders on 16.11.2015. It adjourned the matter thereafter on as many as 5 occasions. Therefore, in such a situation, it would not be appropriate to invoke Order 22 Rule 6 of C.P.C. Order 22 Rule 6 of C.P.C. will come into play only if no intervening hearing had taken place between the date on which orders were reserved and the date on



which the judgment or order is pronounced. But if during the intervening period, some hearing has taken place, then certainly this provision cannot be invoked. In the present case, as already noted, the matter was taken upon at least five occasions and the first defendant had also filed an application calling upon the Court not to extend the interim order earlier granted.

5. In such circumstances, I am of the view that the Court below erred in pronouncing orders without bringing the L.Rs. of the original plaintiff on record. In this view of the matter, the order impugned in the Civil Revision Petition is set aside and the Civil Revision Petition is allowed. It is made clear that this Court has not gone into the merits of the matter at all. The contentions available to the respective parties are left open. In fact, the learned counsel for the L.Rs. of the plaintiff would allege that the revision petitioner had abused the process of law by instituting a subsequent suit before the Sub Court. Be that as it may, this Court merely remands I.A.No.738 of 2013 to the file of the Court below. The Court below shall permit the L.Rs. of the original plaintiff to come on record in the I.A. also. Thereafter, the parties will be heard and orders pronounced afresh in accordance with law. The Court below shall conclude the entire exercise within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Principal District Munsif Court,
Tenkasi.
2. The District Collector, Tirunelveli.
3. The Revenue Divisional Officer, Tenkasi.
4. The Thasildhar, Tenkasi.
5. The Commissioner, Municipal Office, Kadaiyanallur.

+1CC to M/s. Ajmal Associates, Advocate, SR.No.85705
+1CC to the Special Government Pleader SR.No.85651

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AKV