

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.11.2019

Pronounced on : 03.12.2019

Coram:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.R.P.(PD)Nos.1692 to 1694 of 2013
and M.P.No.1 of 2013

V.M.Krishnan (deceased)

1.K.Manickam

2.K.Indirani

.. 1st Petitioner / 2nd Defendant

.. 2nd Petitioner / 3rd Party

[in all CRPs]

versus

K.Raja

..

Respondent / Plaintiff

[in CRP[PD]Nos.1692 & 1693/2013]

[Cause Title accepted vide order dated
09.04.2013 made in M.P.Nos.1&1 of 2013
in C.R.P.SR.Nos.10932, 19060 of 2013]

1. K.Raja

..

1st Respondent / Plaintiff

[in CRP[PD]No.1694/2013]

2.K.Annapachammal

3.K.Subramani

4.K.Vasukki

5.K.Prabhakaran

6.K.Krishnaveni

7.K.Umarani

..

Respondents 2 to 7 /

Proposed Defendants 4 to 9

[in CRP[PD]No.1694/2013]

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the common order dated 14.12.2012 made in I.A.Nos.112 of 2012, 113 of 2012, 114 of 2012 in O.S.No.7862 of 2010 on the file of the learned XVI Additional District and Sessions Court, Chennai-1 respectively.

For Petitioners	: Mr.S.Chandrabose
[in all CRPs]	
For sole Respondent	: Mr.R.Ganesan
[in CRP[PD]Nos.1692 & 1693/2013]	
For 1 st Respondent	: Mr.R.Ganesan
[in CRP[PD]No.1694/2013]	
For Respondent Nos.2, 4 to 6	: Mr.S.Seenuvasan
[in CRP[PD]No.1694/2013]	for Mr.C.A.Diwakar
For Respondent Nos.3 & 7	: No Appearance

COMMON ORDER

The second defendant in O.S.No.7862 of 2010 on the file of the learned XVI Additional District and Sessions Court, Chennai, is the first petitioner herein. The daughter of the deceased first defendant [V.M.Krishnan] in the said suit, namely, K.Indirani, is the second petitioner herein.

2. Initially, the first respondent / K.Raja herein has filed a suit for declaration, declaring the Settlement Deed dated 19.09.2001 executed by the deceased first defendant [V.M.Krishnan] in favour of the second defendant [first petitioner] is not binding on the first respondent/plaintiff and for consequential injunction. The plaint was originally presented before this Court on 21.09.2004 and it was numbered as C.S.No.419 of 2009 on 05.05.2009. In the

meantime, the first defendant [V.M.Krishnan] expired on 27.02.2008. Subsequent to that, the case was not listed for taking steps to implead the legal representatives of the deceased first defendant.

3. In the meanwhile, the case was transferred to the City Civil Court on the point of jurisdiction. The first defendant [V.M.Krishnan] died even prior to the numbering of the suit and the second defendant is one of the legal representatives of the first defendant. Apart from that, the deceased first defendant is having 8 more legal representatives. Since the second defendant is one of the legal representatives of the deceased first defendant, there is no abatement of the suit as against the first defendant.

4. However, the first respondent filed an application in I.A.No.114 of 2012 before the trial Court to implead the other legal representatives of the deceased V.M.Krishnan as the defendant nos.3 to 9, along with the said application. By way of abundant caution, the first respondent had filed two other applications, one [I.A.No.112 of 2012] is to condone the delay of 1022 days in filing the application to set aside the abatement and another one [I.A.No.113 of 2012] is to set aside the abatement of the suit in O.S.No.7862 of 2010.

5. After affording an opportunity to the petitioners herein, the learned XVI Additional District and Sessions Court, Chennai, by a common order dated 14.12.2012, had dismissed the applications, I.A.No.112 of 2012 filed to condone the delay of 1022 days in filing the application to set aside the abatement and I.A.No.112 of 2012 filed to set aside the abatement of the suit, as unnecessary. Moreover, he has ordered notice in I.A.No.114 of 2012, which was filed to implead the other legal representatives of the deceased V.M.Krishnan.

6. Aggrieved over the said findings, the petitioners are before this Court with the present Civil Revision Petitions.

7. Mr.S.Chandrabose, learned counsel appearing on behalf of the petitioners would contend that, the suit was filed in the year of 2004 and thereafter, it was numbered in the year of 2009. Since the first defendant died before numbering the suit, there will be an abatement by parties death. But in the impugned order, the learned XVI Additional District and Sessions Court, Chennai, has held that no abatement has been occurred in the suit filed by the first respondent / plaintiff. The said order was passed in the absence of the proposed legal representatives of the deceased first defendant. So being the

aggrieved party before passing an order, it is necessary for the Court to hear the proposed defendants. Therefore, the impugned order passed by the Court below, is erroneous one.

8. On the other hand, Mr. R. Ganesan, learned counsel appearing for the first respondent and Mr. S. Seenuvasan, learned counsel appearing for the respondents 2, 4 to 6 would contend that, though the first defendant was died during the pendency of the suit, since his legal representatives were already on record as defendants, the question of abatement does not arise in these cases. Only for abundant caution, the first respondent herein has filed the applications to condone the delay in filing the application to set aside the abatement of the suit. Therefore, in the impugned order, the same has been clearly distinguished by the learned trial Judge and therefore, the question of interference by this Court is unnecessary.

9. In this regard, the learned counsel appearing for the first respondent has relied on the judgment of the Patna High Court in **YOGENDRA BHAGATA vs. PRITLAL YADAVA** reported in **2009 (5) CTC 673**, in which, it has held as follows;

*“25. In view of the aforesaid discussions, there is no reason for this Court to depart from the *cursus curiae* on this matter. Thus, it is held that in an Appeal arising out from a decree passed in a Suit for obtaining possession by ejecting trespasses, if one of the co-owner respondents (plaintiffs) dies during the pendency of the Appeal then in presence of the other co-owners plaintiffs, the whole Appeal would not abate. Additionally, I also hold that the definition of word "Legal Representative" as provided under Section 2(11) of the Code is inclusive in character and its scope is wide. It is not confined to a preferred class of heirs only but also includes even intermeddlers. In the present case, apart from being co-owners, some of the plaintiffs are brothers also and even if they are Class II heirs, they being intermeddlers to the estate of deceased, in the facts and circumstances of the case, represent him. Therefore, on this account also there is no question of abatement of the entire Appeal. Thus, the question referred to the Full Bench stands answered accordingly.”*

10. So applying the said principle with the case in our hand, in these cases also, since the second defendant being the son of the deceased first defendant, the question of abatement does not arise.

11. The learned counsel appearing for the first respondent would further contend that, if an application filed to implead the legal representatives of the deceased party, the same has to be approached by the trial Court with liberal construction. In this regard, he relied on the judgment of this Court in **TARACHAND (DECEASED) vs. KATHIJA** reported in **2005 (4) CTC 255** wherein, it has held as follows;

"22. ... Liberal construction of Section 5 is to be extended to an application filed under Order 22, Rule 9, C.P.C. to set aside the abatement. Where sufficient cause is shown in not making the application for bringing on record the Legal Representatives of the deceased / defendant, the Court is bound to condone the delay in filing the application to set aside the abatement."

12. Similarly, our Hon'ble Apex Court in **PANKAJBHAI RAMESHBHAI ZALAVADIA vs. JETHABHAI KALABHAI ZALAVADIYA (DECEASED)** reported in **2017 SCC ONLINE SC 1182**, in which, it has observed as follows;

"18. As mentioned supra, it is only if a defendant dies during the pendency of the suit that the provisions of Order 22 Rule 4 of the Code can be invoked. Since one of the defendants i.e. defendant

No.7 has expired prior to the filing of the suit, there is no legal impediment in impleading the legal representatives of the deceased defendant No.7 under Order 1 Rule 10 of the Code, for the simple reason that the plaintiff in any case could have instituted a fresh suit against these legal representatives on the date he moved an application for making them parties, subject of course to the law of limitation. Normally, if the plaintiff had known about the death of one of the defendants at the time of institution of the suit, he would have filed a suit in the first instance against his heirs or legal representatives. The difficulty that the High Court experienced in granting the application filed by the plaintiff under Order 1 Rule 10 of the Code discloses, with great respect, a hyper-technical approach which may result in the miscarriage of justice. As the heirs of the deceased defendant no.7 were the persons with vital interest in the outcome of the suit, such applications have to be approached keeping in mind that the Courts are meant to do substantial justice between the parties and that technical rules or procedures should not be given precedence over doing substantial justice. Undoubtedly, justice according to the law does not merely mean technical justice

but means that law is to be administered to advance justice.”

13. In the case of **K.RUDRAPPA vs. SHIVAPPA** reported in **2004**

(5) CTC 365, wherein, our Hon'ble Apex Court has held as follows;

“10. ...The case of the appellant before the District Court was that he was not aware of the pendency of the appeal filed by his father against the order passed by the Tahsildar. The father of the appellant died in June, 1994 and the appellant came to know about the pendency of appeal somewhere in September, 1994 when he received a communication from the advocate engaged by his father. Immediately, therefore, he contacted the said advocate, informed him regarding the death of his father and made an application. In such circumstances, in our opinion, the learned counsel for the appellant is right in submitting that a hyper-technical view ought not to have been taken by the District Court in rejecting the application inter alia observing that no prayer for setting aside abatement of appeal was made and there was also no prayer for condonation of delay. In any case, when separate applications were made, they ought to have been allowed. In our opinion, such technical

objections should not come in doing full and complete justice between the parties.”

14. Further, in **SUBRAMANI vs. RAMASAMY** reported in **2007 (2)**

CTC 429, in which, this Court has held as follows;

“9. Observing that non-filing of Application for impleading other legal representatives within the period of limitation, the proceedings would not abate, in the decision reported in Mahabir Prasad v. Jaga Ram, AIR 1971 SC 742 the Supreme Court held as follows:

“...Where in a proceeding a party dies and one of the legal representatives is already on the record in another capacity, it is only necessary that he should be described by an appropriate Application made in that behalf that he is also on the record as an heir and legal representative. Even if there are other heirs and legal representatives and no Application for impleading them is made within the period of limitation prescribed by the Limitation Act the proceeding will not abate...”

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15. Apart from that, in the case of **M.RAMAKRISHNA REDDI vs. REDDIVARI NARASIMHA REDDI** reported in **AIR 1932 Madras 527**, this Court has held as follows;

"Where a respondent's legal representative wishes to bring himself on the record, he ought to apply by petition under O.22, R.4. But he need not apply for setting aside the abatement for it is the appellant's appeal that abates against him."

16. So applying the principles laid down by our Hon'ble Apex Court and by this Court, in these cases also only on *bona fide* belief, the first respondent herein has filed application in I.A.No.114 of 2012, within a time to implead the other legal representatives of the deceased first defendant.

17. Having regard to the totality of the narration made supra, there is no bar for filing the application under Order 1 Rule 10 C.P.C., even when the application under Order 22 Rule 4 of the Code was dismissed as not maintainable under the facts of the case. The legal representatives of the deceased person in such a matter can be added in the array of parties under Order 22 Rule 4 of the Code. In collateral proceeding approach of Court must be to advance substantial justice and not to defeat rights of parties.

18. More than that these three Civil Revision Petitions have been preferred by the revision petitioners after impleading the remaining legal representatives of the deceased first defendant and thereafter, commencement of the trial that too when the case was posted for evidence of D.W.3. Accordingly, there was no explanation offered on the side of the petitioners for filing these Civil Revision Petitions immediately after impleading the legal representatives of the deceased first defendant.

19. So, I am of the opinion that the impugned common order dated 14.12.2012 made in I.A.Nos.112 of 2012, 113 of 2012, 114 of 2012 in O.S.No.7862 of 2010 on the file of the learned XVI Additional District and Sessions Court, Chennai, respectively, is not having any illegality.

20. In the light of the above discussions, these Civil Revision Petitions are dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Speaking Order/Non Speaking Order

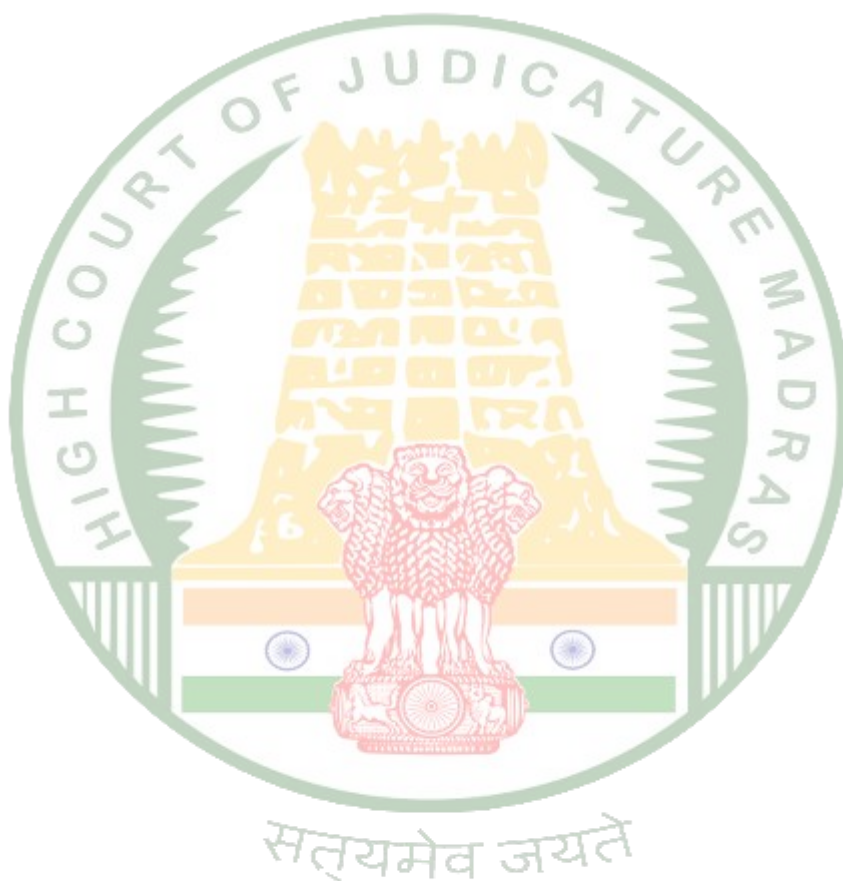
Index : Yes / No

Internet : Yes

sri

To

The XVI Additional District and Sessions Court,
Chennai.



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R.PONGIAPPAN, J.,
sri



Pre-delivery Common Order made in
C.R.P. (PD) Nos. 1692 to 1694 of 2013
and M.P. No. 1 of 2013

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