



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A. (MD)No.341 of 2019

and

C.M.P. (MD)No.6872 of 2019

WEB COPY

1.A.Uthiriyam(Died)

2.U.Anthony

... Appellants

LRs of the 1st Respondent/LRs of Plaintiff

Vs.

1.A.Alocias Likori Jerold Raja

2.John Paul Uthiriyaraja

Respondents 1 and 2 represented

by their power Agent Mariyammal

3.The Sub Registrar,

Sannarpatti Sub-Registrar Office,

Sannarpatti, Dindigul District.

... Respondents

Appellants/2nd Respondent/Defendant

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, to set aside the judgment and decree, dated 30.10.2018 passed in A.S.No.39 of 2012 on the file of the Principal Subordinate Court, Dindigul, reversing the judgment and decree, dated 15.02.2012 passed in O.S.No.534 of 2007 on the file of the Principal District Munsif Court, Dindigul.

For Appellants

:Mr.V.Santhakumaresan

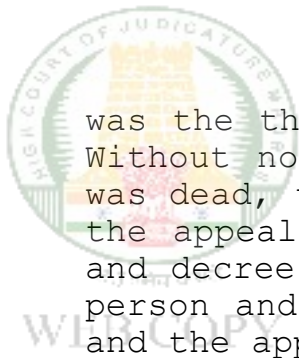
For Respondents

:Mr.M.Thirunavukkarasu

JUDGMENT

This second appeal is preferred by the legal heirs of the plaintiff in O.S.No.534 of 2007 on the file of the Principal District Munsif Court, Dindigul, as against the judgment and decree in A.S.No.39 of 2012 passed by the learned Principal Subordinate Judge, Dindigul, reversing the judgment and decree in O.S.No.534 of 2007.

2.It is admitted that the plaintiff, who was the respondent in the appeal suit, died on 25.10.2015. However, no steps were taken to implead the legal heirs of the plaintiff during the pendency of the appeal. Since the appeal itself abated, in view the death of sold respondent in the above appeal, the appeal could not have been heard on merits. The second respondent in the appeal suit



was the third defendant in the suit and he is only a formal party. Without noticing that the contesting respondent in the appeal suit was dead, the learned Principal Subordinate Judge, Dindigul, allowed the appeal by judgment and decree, dated 30.10.2013. The judgment and decree of the lower appellate Court in short, is against a dead person and therefore, it is a nullity. The abatement is automatic and the appeal cannot be given life by judgment on merits.

3. In that view of the matter, this Court has no other option, but to allow this appeal on the ground that the judgment and decree of the lower appellate Court without impleading the legal heirs of the contesting respondents in the appeal suit, is invalid and void. As a result, this second appeal is allowed and the judgment and decree in A.S.No.39 of 2012, dated 30.10.2018 by the Principal Subordinate Judge, Dindigul, is set aside and the matter is remitted to Principal Subordinate Judge, Dindigul.

4. This Court has accepted the cause title showing the legal heirs of the plaintiff as appellants. The respondents before this Court, who are the appellants before the lower appellate Court, are required to take steps to implead the legal heirs of the deceased plaintiff in the appeal suit.

5. The learned Counsel for the respondents would submit that the death of the plaintiff was not informed, when the appeal was pending and that they came to know about the death of plaintiff only in this proceedings. At this juncture, the learned Counsel for the appellants would submit that his counter part before the lower Appellate Court was not aware of the death of the plaintiff. In such circumstances, the Court may show some lenience, while considering the petition to set aside the abatement caused due to the death of first respondent before the lower Appellate Court, if filed.

6. Accordingly, this appeal is allowed and disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Principal Subordinate Judge, Dindigul.

2. The Principal District Munsif, Dindigul.

<https://hcservices.ecourts.gov.in/hcservices/>



3.The Sub Registrar,
Sannarpatti Sub-Registrar Office,
Sannarpatti, Dindigul District.

4.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.M.THIRUNAVUKKARASU, Advocate SR-79023.

+1 CC to Mr.V.SANTHAKUMARESAN, Advocate SR-79385.

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31.07.2019

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