

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.941 of 2004

Daulat Basha

..Appellant

Vs.

- 1.Mehurrunissa
- 2.Jamrudunissa
- 3.Tajunnissa (Deceased)
- 4.Sirajunnissa
- 5.S.Abdulla Badsha
- 6.S.A.Mannan
- 7.Katheeja Bi,
- 8.Mehrunnisa
- 9.Saidani Bi,
- 10.T.S.Ismail,
- 11.T.S.Syed Yakub
- 12.T.S.Syed Ahmed
- 13.M.Abdul Rasheed
- 14.E.A.P.Akbar Badsha
- 15.E.A.P.Kamal Badsha
- 16.Corporation Bank,
Salem Town,
Rep.by its Branch Manager,
Car Street, Salem-1.
- 17.R.Naheem Ahamed
- 18.R.Zuber Ahmed
- 19.R.Mazher Ahmed
- 20.R.Manzar Ahmed

.. Respondents

RR17 to 20 brought on record of the legal representatives of deceased R3 vide order dated 23.02.2010 made in C.M.P.No.140/2009.

PRAYER: First Appeal filed under Section 96 of CPC against the Judgment and decree dated 29.10.2003 passed in O.S.No.2 of 2003 on the file of the Additional District Judge Fast Tract Court No.I, Salem.

For Petitioner : Mr.Zeenath Begum

For respondents : Mr.P.Gururaj for R5
Mr.P.Mathivanan for RR7 to 11
Mr.V.Jevagiridharan for R13
Mr.V.S.Kesavan for RR14 & 15
Non-appearance
No appearance for RR1,2,4,6,12,16
to 19
R3-Died steps taken
RR1,5 to 11 died

O R D E R

The appeal suit is filed challenging the judgment and decree dated 29.10.2003 passed in O.S.No.2 of 2003 on the file of the Additional District Judge, East Tract Court No.I, Salem.

2. The suit was instituted for partition and the relief of partition to the appellant was rejected by the Trial Court. The other relief of declaration was also denied and the appellant is constrained to file the appeal suit.

3. The appeal suit was filed in the year 2004 and the respondents 1 and 5 to 11 are dead. The date of death is also not available with the respective learned counsels appearing on behalf of the appellant as well as the respondents. Even the learned counsel appearing on behalf of the respondents 5 to 11 is unable to furnish the details regarding the date of death as well as the present address of these respondents for the purpose of taking steps so as to proceed with the appeal suit. At the outset, the learned counsel for the appellant is neither able to furnish any details nor filed any petition for substitution. The learned counsel appearing for the respondents 5 to 11 as well as 13th respondent are also unable to furnish the details regarding date of death, address etc., Under these circumstances, this Court cannot keep the matter pending for an unspecified period and the same would not serve any purpose. Even as per Order 22 Rule 10-A, it is the duty of pleader to communicate to Court, about the death of a party and the steps are to be taken for the purpose of completion of the pleadings so as to proceed with the appeal suit. In view of the fact that no steps have been taken in the appeal suit, the first appeal stands dismissed as abated and the appellant is at liberty to restore the appeal suit, if he has chosen to do so, after securing the particulars within a reasonable period of time.

ssb

07.01.2020

This Appeal having been posted on 24/01/2020 under the caption "For Being Mentioned" pursuant to the order of this Court, dated 07/01/2020 and in the presence of the above mentioned Advocates, the Court made the following order;

The case is posted on 24.01.2020 under the caption "for being mentioned".

2. This Court passed an order in A.S.No.941 of 2020 on 07.01.2020. The appeal suit was dismissed as abated and the appellant was granted liberty to restore the appeal suit, if they chose to do so, after securing necessary particulars in respect of unserved respondents within a reasonable period of time.

3. In fact, liberty was granted to the appellants to restore the appeal suit, if they could able to secure proper instruction and correct address of the unserved respondents.

4. Not satisfied with the above order, the learned counsel appearing on behalf of the appellant made a mentioning, stating that under Order 12 Rule 4 Sub-clause 3, the appeal suit can be dismissed as abated only as against the respondents who are all died and therefore, the appeal suit is to be restored in respect of other respondents who are all alive.

5. Order 22 Rule 4 Sub-clause 3 enumerates that "where within the time limited by law no application is made under sub-rule(1), the suit shall abate as against the deceased defendant."

6. The learned counsel for the appellant is right in contending that the appeal suit can be dismissed as against the deceased defendant. In this appeal suit also, this Court also had done the same thing. The preliminary decree was passed allotting shares to the respective parties, both to the appellant as well as to the respondents. In a partition suit, when the preliminary decree is passed and the respondents 1, 5 to 11 are dead [nearly about eight respondents died in the appeal suit], it may not be possible to adjudicate the matter on merits. The suit was contested by the respective parties, before the Trial Court. All the appellant as well as the respondents participated in the Trial and contested the suit and the preliminary decree was passed. Under these circumstances, this Court was of the opinion that the appeal suit cannot be proceeded with, in the absence of impleading the necessary parties in a partition suit. In the absence of such parties,

adjudication cannot be done and therefore, no meaningful purpose would be achieved in the event of adjudicating the appeal suit. Presuming the preliminary decree is to be confirmed by this Court, then also, the final decree proceedings cannot be entertained, in view of the fact that the respondents have died, nearly about eight years, and no steps had been taken. When the final decree proceedings itself cannot be proceeded with, and no execution petition also can be filed, in the absence of these particulars, this Court is of the opinion that the appeal suit also cannot be proceeded with unless the appellant takes effective steps to implead all the necessary parties, so as to continue the adjudication in the appeal suit.

7. The appeal suit was filed in the year 2004. Eight respondents are dead, during the pendency of the appeal suit, nearly 16 years has lapsed. The preliminary decree was passed 16 years back and under these circumstances, in the absence of necessary parties, who are all none other than relatives to the applicant, this Court would not be in a position to adjudicate the appeal suit and deliver a judgment. Non-joinder of necessary parties is also a ground to reject the appeal. Apart from the death of 8th respondent, against whom the appeal suit gets abated.

8. Under these circumstances, this Court is not in a position to adjudicate the appeal suit on merits, in view of the fact that on behalf of the appellant, a memo was filed stating that the death of the respondents 1, 5 to 11 is not known to the appellant and the respondents are living in various districts. Even after enquiry with the relatives, the appellant is unable to secure particulars and the correct address. Under these circumstances, the memo states that the appellant is unable to procure the death certificate from the local body for the purpose of impleading the necessary parties. This being the factum, the order passed by this Court on 07.01.2020 in A.S.No.941 of 2004 is confirmed and A.S.No.941 of 2004 is dismissed.

Ssb

24.01.2020

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Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Additional District Judge,
Fast Tract Court No.I, Salem.

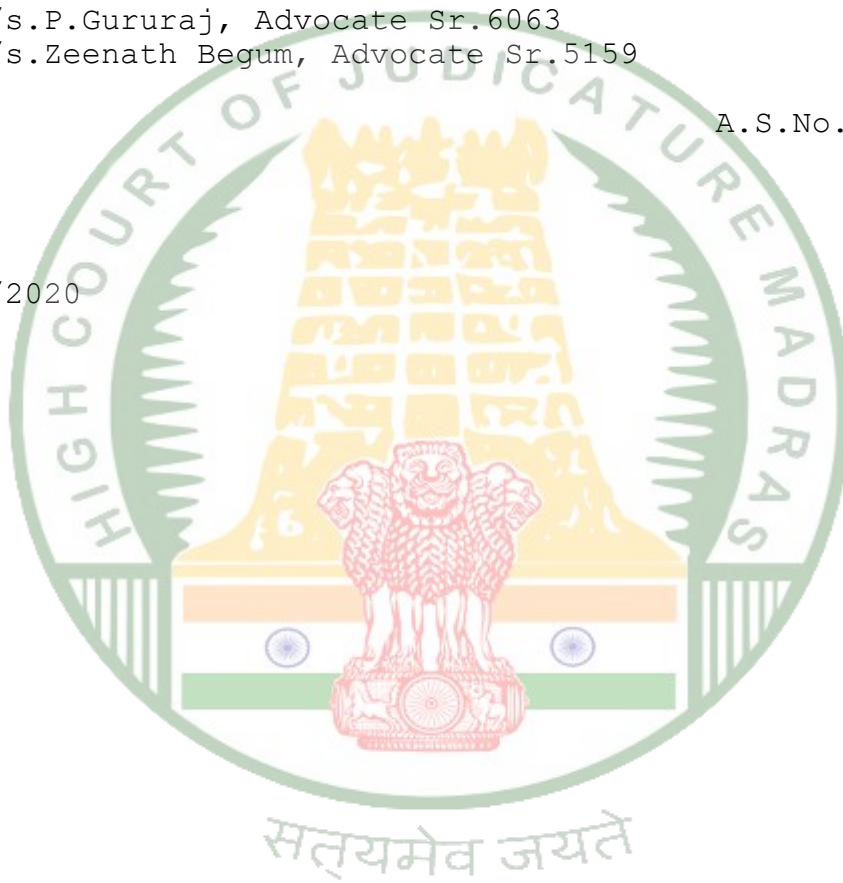
Copy to

The Section Officer,
VR Section, High Court, Madras.

+1cc to M/s.P.Gururaj, Advocate Sr.6063
+1cc to M/s.Zeenath Begum, Advocate Sr.5159

A.S.No.941 of 2004

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srg 03/08/2020



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