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C.R.P.(NPD) Nos.2190 and 2191 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2023

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

Civil Revision Petition Nos.2190 and 2191 of 2008
and M.P.No.1 of 2008

R.N.Shanmugavadivel

... Petitioner in both CRPs

-Vs-

1.R.Soundararajan
R.C.Natarajan (Died)
R.N.Soundararajan (Died)

2.Dhanalakshmi

3.Senthil Babu

4.Archana Devi

... Respondents in
CRP No.2190 of 2008

1.R.Soundararajan
R.C.Natarajan (Died)
R.N.Soundararajan (Died)

2.Nachammal

3.Sathyabama

4.Backiyalakshmi

5.Pangajavalli

6.R.C.N.Mylsamy

7.R.C.N.Krishnakumar

... Respondents in
CRP No.2191 of 2008



C.R.P.(NPD) Nos.2190 and 2191 of 2008

Prayer in CRP No.2190 of 2008: Civil Revision Petition under Section 115 of Civil Procedure Code against the fair and decreetal order dated 10.03.2008 passed by the learned Subordinate Judge, Udumalpet in I.A.No.56 of 2007 in I.A.No.33 of 2006 in O.S.No.460 of 1994.

Prayer in CRP No.2191 of 2008: Civil Revision Petition under Section 115 of Civil Procedure Code against the fair and decreetal order dated 10.03.2008 passed by the learned Subordinate Judge, Udumalpet in I.A.No.80 of 2007 in I.A.No.33 of 2006 in O.S.No.460 of 1994.

For Petitioner : Mr.C.R.Prasanan (In CRP No.2190 of 2008)
Mr.N.Umapathi (In CRP No.2191 of 2008)

For Respondents : Mr. N.Thiagarajan - for R1 in both CRPs
Mr.M.Parthasarathy - for RR 2 and 3
RR 2 to 7 - served, no appearance
(In CRP 2191 of 2008)

ORDER

The 3rd defendant in the suit is the petitioner before me. O.S.No.460 of 1994 is a suit for specific performance of an agreement of sale. The said suit was instituted by one R.Soundararajan against one R.C.Natarajan. An application was taken in I.A.No.1086 of 1995 to implead defendants 2 and 3. The said application was allowed on 12.06.1996 impleading defendants 2 and 3. After they were impleaded on 17.01.1997, the second defendant passed away. Therefore, two applications were filed in I.A.Nos.705 and 706 of 1997 for setting aside the abatement and to bring on record the legal representatives of the second



C.R.P.(NPD) Nos.2190 and 2191 of 2008

defendant. When these applications were pending, the first defendant R.C.Natarajan passed away on 29.06.2002. Due to non payment of batta, I.A.Nos.705 and 706 were dismissed. Having dismissed the applications, the Court below proceeded to dismiss the suit itself. In order to restore the suit, I.A.No.33 of 2006 was presented on 29.08.2002. The said application was kept in numbering stage for nearly four years and was numbered only in the year 2006.

2. It was the argument of the learned counsel for the petitioner / defendant that while the applications were filed to restore the suit, no application was filed to set aside the order of dismissal of I.A.Nos.705 and 706 of 1997. In order to cure the defect, the plaintiff filed I.A.No.80 of 2007 to bring on record the legal representatives of the deceased second defendant. They were impleaded as defendants 10 to 12. It was urged before the court below that the applications are not maintainable because,

- i. On the date of filing of the application, the suit had already abated;
- ii. No application was filed to set aside the abatement or to condone the delay in setting aside the abatement, and
- iii. When these two applications have not been filed, an application to bring on record the legal representatives is not maintainable.



C.R.P.(NPD) Nos.2190 and 2191 of 2008

WEB COPY

3. I.A.No.80 of 2007 which had been filed to implead the legal representatives of the first defendant was also not accompanied by an application to set aside the abatement or to condone the delay in setting aside the abatement. The learned trial Judge took up both the applications together and allowed the same by an order dated 10.03.2008. Aggrieved by the order in I.A.No.56 of 2007, C.R.P.No.2190 of 2008 has been filed and C.R.P.No.2191 of 2008 has been presented against the dismissal of I.A.No.80 of 2007.

4. When the matter was taken up for hearing today, Mr.C.R.Prasanan and Mr.Umapathy represented that since the parties have taken the bundle away from them, they are reporting no instructions. I was not willing to accept the same since, though the Vakalat has been taken away from them, no new counsel has appeared in the matter. Apart from that, the suit being of the year 1994, adjourning the matter only adds to the agony of the parties. I do not want it to continue. Therefore, I requested the counsel to make their submissions on the merits of the case and they proceeded to do so.

5. Heard Mr.C.R.Prasanan and Mr.Umapathy, respective counsel for the petitioner and Mr.N.Thyagarajan, learned counsel for the first respondent in both the revisions.



C.R.P.(NPD) Nos.2190 and 2191 of 2008

6. It is settled position that the Court does not dismiss the suit as abated, but merely records the abatement which has already occurred. The Limitation Act prescribes 150 days from the time of the death of a party till the suit abates. In order to set aside the abatement and to bring on record, separate applications ought to have been filed. But, unfortunately in this case it has not been done so. I should not forget that, procedure is mere handmaiden of justice and should not affect the substantive rights of parties. Apart from that, the mere fact that the learned Judge has allowed I.A.No.56 of 2007 and I.A.No.80 of 2007 shows that the Court is deemed to have condoned the delay to set aside the abatement and also the abatement which has occurred in the suit. Further, it is on record that the Court has heard the parties before allowing the applications.

7. Under the Civil Rules of Practice, the definition of an application includes "an oral application" also. This is from Rule 3(2) of the Civil Rules of Practice and Circulars issued by this Court in exercise of its powers under Section 122 of the Civil Procedure Code. From the fact that an application has been filed and allowed, apart from showing that the Court is deemed to have set aside the abatement and condoned the delay, I am able to perceive that an oral application has been made and allowed. Therefore, though it is a good practice to condone the delay and set aside the abatement together with an application to bring on record the legal representatives, given the fact that it was not filed by the counsel, I do not want to penalise the party. I am sure none of the parties to the suit would even be aware



C.R.P.(NPD) Nos.2190 and 2191 of 2008

as to what is the meaning of the word 'abatement'. The mistake of the counsel should not be led to the door steps of the party.

8. Taking the overall circumstances into consideration, the trial Court having condoned the delay and therefore, being a discretionary order, I do not want to interfere with it under Article 227 of the Constitution. In the light of the above, both these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

16.08.2023

Index : Yes/No

NCS : Yes/No

1/2

KST

To

The Subordinate Judge,
Udumalpet



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C.R.P. (NPD) Nos.2190 and 2191 of 2008

V. LAKSHMINARAYANAN, J.
KST

C.R.P. (NPD) Nos.2190 and 2191 of 2008

16.08.2023