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C.M.P.No.6167 of 2023

in

A.S.No.660 of 2016

R.SUBRAMANIAN, J.

and

N.SENTHILKUMAR, J.

This petition has been filed seeking to set aside the order dated 02.01.2023. The said order dated 02.01.2023 reads as follows:-

"When the matter was earlier listed on 12.12.2022 it was reported that the 1st respondent in the appeal died in the year 2018. Taking note of the fact that steps had not been taken, this Court observed that the appeal is liable to be dismissed as abated as against the 1st respondent.

2.It is now admitted that the appeal is against the decree granting preliminary decree for partition in favour of the plaintiff / 1st respondent against the appellant. Having regard to the admitted fact that the 1st respondent died long back and the appeal stands abated as against the 1st respondent, this Court finds that the appeal does not survive as against other respondents as well.

3.Therefore, the appeal is dismissed as abated as against the 1st respondent and consequently dismissed against other respondents. No costs. Consequently, connected miscellaneous petition is closed."

R.SUBRAMANIAN, J.



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and
N.SENTHILKUMAR, J.

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3.The said order is nothing but an order, which records the fact that the appeal has abated. Abatement under the provisions of the Code of Civil Procedure is automatic. Upon expiry of 90 days from the date of death of a party to a proceeding, the appeal stands abated and an order to that effect is passed does not make any difference. Therefore, a petition to set aside the order recording the abatement of the appeal is wholly unnecessary.

4.A petition filed under Order 22 Rule 9 of the Code, seeking to set aside the abatement would take care of the situation and once the abatement is set aside, the appeal will stand automatically restored. In view of the same, this petition is dismissed as unnecessary.

(R.S.M., J.) (N.S., J.)
06.11.2023

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