



Rev.Aplc(MD)No.73 of 2021

2010 against A.S.No.22 of 2005 against O.S.No.769 of 2004 on the file of this Court.

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For Petitioner :Mr.S.Sathasivam
For R1 :Mr.S.Manohar

ORDER

This Review Application is filed to set aside the order dated 28.01.2014 passed in M.P(MD)No.1 of 2014 in SA(MD)SR.No.45417 of 2010 against A.S.No.22 of 2005 against O.S.No.769 of 2004 on the file of this Court.

2. The learned counsel for the petitioner has submitted that the first respondent filed a suit in O.S.No.769 of 2004 on the file of the District Munsif Court, Dindigul against the petitioner represented by its then manager S.P.Venkatachalapathy seeking for permanent injunction. That suit was decreed. Aggrieved by the decree, the petitioner through the manager preferred an appeal in A.S.No.224 of 2005 on the file of Sub Court, Dindigul and the same was dismissed. Against the judgment of First Appellate Court, the petitioner through its present manager S.P.Ramamoorthy filed the Second Appeal with application in M.P(MD)No.1 of 2014 to accept the cause title in the



memorandum of grounds of appeal stating that the then manager died during the pendency of A.S.No.224 of 2005. But this Court dismissed that petition and directed the petitioner to get the decree corrected from the First Appellate Court. It is a settled principle that if a party to the decree died after passing of the decree, the legal representative of the deceased can file appeal straightaway without any petition such as a petition to accept the cause title or a petition to recognize him as the legal representative of the deceased. However, the petitioner filed the petition to accept the cause title. Without considering the principle this Court has dismissed the petition. The error is apparent in the impugned order. So, the order of this Court may be reviewed and the petition may be allowed. In support of his argument, the learned counsel for the petitioner relied on the judgment of this Court reported in **2016 (1) CTC 61** in the case of **Amsavalli (Died) and Others Vs. Sarangabani**, wherein it is held in paragraph No.26 as follows:

26. To sum up:-

(i) In respect of an appeal presented against a dead person, who died after the judgment of the lower Court and before the appeal is presented, Order XXII of C.P.C. is not applicable.

(ii) (a) If an appeal is presented against a person who is dead on the date of presentation, without knowing that the said person has already died after the judgment of the



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Lower Court, the Court may under Section 153 of the C.P.C. permit the appellant to amend the cause title or may return the appeal memorandum for amendment and for re-presentation.

(b) On the date when such an application under Section 153 of C.P.C. is filed for amending the cause title, if the period of limitation for appeal had already expired, the appellant shall file an application under Section 5 of the Limitation Act, seeking to condone the said delay.

(c) If the delay is condoned, then the petition to amend the cause title of the appeal memorandum may be allowed.

(d) On the date when such an application under Section 153 C.P.C. is filed for amending the cause title if the period of limitation for the appeal has not expired, then the said application may be allowed and accordingly the cause title may be amended thereby including the legal representatives of the deceased as parties to the appeal.

(iii) If a party to the decree had died before the presentation of the appeal and the same is known to the appellant, he can straightaway file the appeal against the legal representatives of the deceased without any petition such as a petition to accept the cause title or a petition to recognize the legal representatives.

(iv) If a party to the decree had died after the passing of the decree and before filing of the appeal, the legal representatives of the deceased may file an appeal straightaway without any petition such as a petition to accept the cause title or a petition to recognize him as the legal representative of the deceased.



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(v) The procedure herein above stated shall also be applicable to a case where a party dies after the final conclusion of the hearing and before the pronouncement of the judgment by the Lower Court.

(vi) While presenting an appeal by or against the Legal Representatives of the deceased, the appeal memorandum shall contain a statement that the said parties are the legal representatives of the deceased and shall also file an affidavit describing as to how they are the legal representatives.

(vii) The above procedure shall be uniformly followed by all the Courts in the State of Tamil Nadu and the Union Territory of Puducherry.

3. The learned counsel for the first respondent contended that there is no clerical error or mistake in the impugned order. There is no error apparent in the order and this petition would not come under Section 114 of the Civil Procedure Code and review will not arise.

4. Heard both sides and perused the records in this Review Application.

5. Admittedly, the first respondent filed a suit in O.S.No.769 of 2004 on the file of the Additional District Munsif Court, Dindigul against the petitioner/Arulmighu Soundararaja Perumal Thadikombu Chitra



Pounami Mandagapadi and its Dharma Chatram (S.V.Palchamy Chettiar Dharma Chatram) represented by its manager S.P. Venkalachalapathy and two others. The said suit was decreed by the Trial Court on 23.6.2005. Against the decree, the petitioner through the manager preferred the appeal in A.S.No.224 of 2005 before the Additional Sub Court, Dindigul. That appeal was dismissed on 29.06.2010. It is the case of the petitioner during pendency of appeal the then manager S.P.Venkatachalapathy died and so, the petitioner through its present manager S.P.Ramamoorthy filed the Second Appeal along with petition to accept the present cause title. However, this Court dismissed the petition to get decree amended. On perusal of citation relied on by the petitioner it is clear that if a party to the decree died after passing of the decree, the legal representative of the deceased can file appeal straightaway without any petition such as a petition to accept the cause title or a petition to recognize him as the legal representative of the deceased. Therefore, considering the facts and circumstances, there is nothing wrong in filing the Second Appeal by the petitioner its present manager S.P.Ramamoorthy even without any formal petition to accept the cause title. Hence, in view of the principle laid down by this Court reported in **2016 (1) CTC 61** and also in the interest of justice, the order of this Court dismissing the petition in M.P(MD)No.1 of 2014 in



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SA(MD)SR.No.45417 of 2010 is to be set aside. By passing such order the respondents will not be prejudiced in any way.

5. In the result, this Review Application is allowed and the order dated 28.01.2014 passed in M.P(MD)No.1 of 2014 in SA(MD)SR.No.45417 of 2010 is hereby set aside. No costs.

6. Registry is directed to number the Second Appeal, if it is otherwise in order and list it for admission in the usual course.

.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

1.The

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

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Pre - Delivery Judgment made in
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