



S.A.(MD).No.61 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.04.2023

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

S.A.(MD).No.61 of 2021

and

C.M.P.(MD).No.703 of 2021

Shanmugam (Died on 17.10.2019)

... Original Defendant

1.Manoranjitham

2.Jeyachandran

3.Manoharan

4.Jeyarani

5.Latha

... Appellants/LRs of deceased Shanmugam/
LRs of sole respondent/
LRs of sole defendant

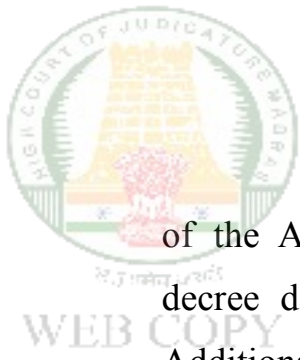
*(Cause title accepted vide Court order dated 08.01.2021 made in C.M.P.
(MD).No.122 of 2021 in S.A.(MD).SR.No.16587 of 2020)*

Vs.

Sastha Kovil,
Muppudathi Amman Kovil Street,
Tenkasi Town,
represented through its administrator,
Hariharasubramanian.

...Respondent/Appellant/Plaintiff

Prayer: Second Appeal is filed under Section 100 of CPC to set aside the Judgment and Decree dated 07.01.2020 passed in A.S.No.99 of 2015 on the file



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of the Additional Subordinate Court, Tenkasi, reversing the judgment and decree dated 16.10.2015 passed in O.S.No.82 of 2012 on the file of the Additional District Munsif Court, Tenkasi by allowing this Second Appeal.

For Appellants : Mr.V.Meenakshisundaram

For Respondent : Mr.R.Mukundan

for Mr.V.Karthikeyan

JUDGMENT

This Second Appeal has been filed challenging the judgment and decree of the Lower Appellate Court. The legal representatives of the defendant in the suit are the appellants herein. The respondent is the plaintiff in the suit. The suit O.S.No.82 of 2012 was filed by the plaintiff on the file of the Additional District Munsif Court, Tenkasi seeking for the relief of declaration of title in respect of suit first schedule and for recovery of possession in respect of suit second schedule and also for recovery of arrears of rent at the rate of Rs.1000/- per month from December 2011 and also for mandatory injunction to remove the alleged gate in the suit first schedule. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

2. As seen from the plaint, the plaintiff, which is a temple, claims that the defendant is their tenant in respect of the land and the superstructure. They also claimed that the defendant is in arrears of rent and he has also illegally put up a



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gate in the suit first schedule, which they seek for removal by seeking for a mandatory injunction. They also claim arrears of rent from the defendant at the rate of Rs.1000/- per month from December 2011 onwards.

3. However, as seen from the written statement, the defendant has denied the allegations of the plaintiff and he disputes that he is a tenant in respect of the superstructure, but admits that he is a tenant only in respect of the vacant land. He also claims that earlier the plaintiff had instituted rent control proceedings in R.C.O.P.No.14 of 2009 against the defendant which came to be dismissed on 30.11.2010, which is also confirmed by the Rent Control Appellate Authority in R.C.A.No.1 of 2011 by its judgment dated 25.08.2011. In the aforementioned circumstances, the defendant claims that the suit for declaration, recovery of possession and mandatory injunction filed by the plaintiff has to be dismissed.

4. The Trial Court based on the pleadings of the respective parties framed issues. Thereafter, oral and documentary evidence was let in by both the parties. The Trial Court, namely, the Additional District Munsif Court, Tenkasi by its judgment and decree dated 16.10.2015 in O.S.No.82 of 2012 dismissed the suit filed by the plaintiff temple. Aggrieved by the same, the plaintiff temple filed a first appeal before the Lower Appellate Court, namely, the



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Additional Sub Court, Tenkasi in A.S.No.99 of 2015. The Lower Appellate Court has however reversed the findings of the Trial Court by allowing the first appeal by its judgment and decree dated 07.01.2020 and granted the suit reliefs in entirety. Aggrieved by the same, the legal representatives of the deceased defendant after obtaining leave from this Court has filed this Second Appeal.

5. The appellants have raised a contention that the judgment and decree passed by the Lower Appellate Court dated 07.01.2020 in A.S.No.99 of 2015 is bad in law as it is violative of Order 22 Rule 6 of CPC. According to the appellants, even before the conclusion of the hearing by the Lower Appellate Court, the defendant died and therefore, without impleading the legal representatives of the deceased defendant, the Lower Appellate Court ought not to have passed a judgment and decree on 07.01.2020 in A.S.No.99 of 2015. According to the appellants, the hearing got concluded by the Lower Appellate Court only on 06.11.2019, whereas, the defendant died on 17.10.2019 prior to the conclusion of hearing and therefore, according to the appellants, since the defendant died even prior to the conclusion of the hearing, they ought to have been brought on record as the legal representatives of the deceased defendant and only thereafter, after giving an opportunity of hearing to the appellants, a judgment could have been passed by the Lower Appellate Court.



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6. Based on the said contentions, this Court admitted the Second Appeal on 08.02.2021 by formulating the following substantial questions of law:

“(i) Whether the lower appellate Court was right in concluding that Order 22 Rule 6 of C.P.C. would apply and the legal representatives of the deceased sole appellant need not be brought on record on the ground that the appeal was reserved for Judgment on 14.10.2019, overlooking the fact that the case was reopened for oral arguments of the appellant on 21.10.2019?”

“(ii) Whether Order 22 Rule 6 of C.P.C. would apply to a case where the Appellate Court had reopened the case and posted it for further arguments after having reserved Judgments?”

7. The learned counsel for the appellants drew the attention of this Court to Order 22 Rule 6 of CPC and would submit that it is very clear that when a party to a litigation dies before the conclusion of the hearing, his or her legal representatives will have to be brought on record and only thereafter, after affording an opportunity of hearing to them, a judgment can be passed. He also drew the attention of this Court to the case hearing details of the Appeal Suit No.99 of 2015 before the Additional Sub Court, Tenkasi from 26.04.2018 till 07.01.2020 when the impugned judgment and decree was passed by the Lower



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Appellate Court. He would submit that as seen from the daily status details of the Additional Sub Court, Tenkasi with regard to A.S.No.99 of 2015, it is clear that the hearing got concluded only on 06.11.2019.

8. The details of the daily case status as recorded by the learned Additional Sub Judge, Tenkasi in in A.S.No.99 of 2015 relied upon by the learned counsel for the appellants are as follows:

S.No.	Date	Business Details
1.	14.10.2019	Judgment not ready for judgment call on 21.10.19.
2.	21.10.2019	For clarification appellant side oral arguments by 31.10.19.
3.	31.10.2019	Appellant side oral arguments by 4.11.19.
4.	04.11.2019	Appellant side oral arguments by 5.11.19.
5.	05.11.2019	Appellant (by mistake, it has been mentioned as respondent) filed memo 17.10.19 respondent died (by mistake, it has been mentioned as appellant died) memo record steps for respondent (by mistake, it has been mentioned as appellant) call on 6.11.19.
6.	06.11.2019	Appellant filed memo appellant side arguments heard on 12.09.19. Subsequently respondent died (by mistake, it has been mentioned as appellant died) on 17.10.19. Under Order 22 rule 6 LR's of respondent (by mistake, it has been mentioned as appellant) not to be impleaded. Appeal not abated memo recorded clarification heard for judgment call on 18.11.19.



10. However, according to the learned counsel for the respondent, the hearing got concluded on 30.09.2019 itself as seen from the proceedings of the learned Judge, who had passed the impugned judgment and decree, as the respondent was also heard on that date and it was reserved for judgment.



Discussion:

11. Order 22 Rule 6 of CPC reads as follows:

“6. No abatement by reason of death after hearing.- Notwithstanding anything contained in the foregoing rules whether the cause of action survives or not there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.”

As seen from the above provision, it is clear that only in cases where the learned Judge has concluded the hearing and has reserved the matter for pronouncing judgment and in the interregnum, if a party to the litigation dies, there is no necessity for bringing on record the LRs of the deceased litigant.

12. The question that arises for consideration in this Second Appeal is whether as to which date the learned Judge while passing the impugned judgment and decree had concluded his hearing. The appellants contend that the hearing got concluded only on 06.11.2019, whereas, the respondent contends that the hearing got concluded on 30.09.2019 itself even prior to the death of the defendant, who died on 17.10.2019. But as seen from the daily



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case status (which has been extracted hereunder for better appreciation), which has also been verified from the original records and found to be true, it is clear that the hearing got concluded only on 06.11.2019 for the following reasons:

S.No.	Date	Business Details
1.	14.10.2019	Judgment not ready for judgment call on 21.10.19.
2.	21.10.2019	For clarification appellant side oral arguments by 31.10.19.
3.	31.10.2019	Appellant side oral arguments by 4.11.19.
4.	04.11.2019	Appellant side oral arguments by 5.11.19.
5.	05.11.2019	Appellant (by mistake, it has been mentioned as respondent) filed memo 17.10.19 respondent died (by mistake, it has been mentioned as appellant died) memo record steps for respondent (by mistake, it has been mentioned as appellant) call on 6.11.19.
6.	06.11.2019	Appellant filed memo appellant side arguments heard on 12.09.19. Subsequently respondent died (by mistake, it has been mentioned as appellant died) on 17.10.19. Under Order 22 rule 6 LR of respondent (by mistake, it has been mentioned as appellant) not to be impleaded. Appeal not abated memo recorded clarification heard for judgment call on 18.11.19.

a) Even though as seen from the Court proceedings, it has been recorded by the learned Judge that on 30.09.2019, the respondent side arguments were heard and he had reserved the matter for pronouncing judgment, thereafter, the subsequent proceedings of the very same learned Judge makes it clear that the



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learned Judge had reopened the matter once again for further hearing and had also in one of the hearings, i.e., on 05.11.2019, directed the appellant to take steps to bring on record the legal representatives of the deceased defendant. However, on the very next day, i.e., on 06.11.2019, the learned Judge, after recording the memo filed by the appellant that there is no necessity to bring on record the LRs of the deceased defendant as per the provisions of Order 22 Rule 6 CPC, has observed that the appeal will not get abated and he has accepted the memo filed by the appellant. Thereafter, the learned Judge reserved the matter for pronouncement of judgment by his proceedings dated 06.11.2019. The judgment and decree, which is impugned, was pronounced by the Lower Appellate Court on 07.01.2020.

b) As seen from the daily case status of A.S.No.99 of 2015, even though the learned Judge had reserved the matter for pronouncement of judgment after hearing the arguments of both the parties on 30.09.2019 itself, he had reopened the case for fresh hearing and posted the same for appellant side arguments on various dates thereafter and as stated supra, in one of the hearings, i.e., on 05.11.2019, he had also directed the appellant to take steps to bring on record the LRs of the deceased defendant, but on the very next day, i.e., on 06.11.2019, without steps having been taken by accepting the memo filed by the appellant, the learned Judge has reserved the matter for pronouncement of



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judgment once again on 06.11.2019 and the judgment and decree, which is challenged in this Second Appeal, came to be passed thereafter on 07.01.2020.

c) No opportunity of hearing was granted to the respondent as seen from the proceedings between 21.10.2019 and 06.11.2019 and the learned Judge had posted the matter only for appellant side arguments. It is also admitted by the respondent herein that the defendant died on 17.10.2019. As observed earlier, the hearing got concluded only on 06.11.2019, whereas, the defendant died even prior to the conclusion of the hearing, i.e., on 17.10.2019.

13. When Order 22 Rule 6 of CPC makes it clear that only in cases where a party to the litigation dies after the conclusion of the hearing and before pronouncement of the judgment, there is no necessity to bring on record the LRs of the deceased litigant, but in the instant case, when it has been established before this Court by the appellants that the defendant died on 17.10.2019 prior to the conclusion of hearing, which happened on 06.11.2019, this Court is of the considered view that the impugned judgment and decree passed by the Lower Appellate Court is bad in law and is in violation of provisions of Order 22 Rule 6 of CPC.



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14. For the foregoing reasons, the substantial questions of law formulated by this Court at the time of admission of this Second Appeal are answered in favour of the appellants by holding that the Lower Appellate Court committed an error by pronouncing a judgment when the defendant died even before the conclusion of hearing and therefore, the judgment has been passed in violation of Order 22 Rule 6 of CPC.

15. Hence, the impugned judgment and decree dated 07.01.2020 passed by the Lower Appellate Court, namely, the Additional Sub Court, Tenkasi in A.S.No.99 of 2015 is set aside and the matter is remanded back to the very same Court for fresh consideration on merits and in accordance with law after the respondent takes steps to bring on record the legal representatives of the deceased defendant, who are the appellants herein, by filing a formal application as per law. The Lower Appellate Court is directed to dispose of the appeal on remand within a period of six (6) months from the date of receipt of a copy of this judgment. The Lower Appellate Court shall decide the appeal uninfluenced by any of the observations made by this Court in this judgment.



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16. In the result, this Second Appeal is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

13.04.2023

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

To

- 1.The Additional Sub Court,
Tenkasi.
- 2.The Additional District Munsif Court,
Tenkasi.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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ABDUL QUDDHOSE, J.

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