



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Monday, the Ninth day of January Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice S.SOUNTHAR

CMP(MD) No.12137 of 2022
IN

SA(MD) No.392 of 2015

RAMIAH NADAR

... PETITIONER/APPELLANT

Vs

1 A.RAJENDRAN (DIED)

1.A.RAJKUMAR

2 A.RAJASINGA

3 A.RAJASEKAR

4 RAVI

... RESPONDENTS/RESPONDENTS 2 TO 5

5 R.JAYARANI

6 H.JAYAHEMA PRATHIBA

7 JAYA SARANYA

8 R.JAYA NIVEDHA ... RESPONDENTS 5 TO 8/PROPOSED RESPONDENTS 6 TO 9

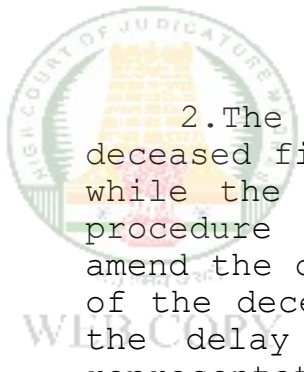
Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to implead the respondents 5 to 8 herein as respondents 6 to 9 in the above second appeal.

PRAYER IN SA(MD) No.392 of 2015:

Pleased to set aside the judgment and decree passed in A.S.No.149 of 2010 on the file of the Subordinate Judge, Thoonthukudi dated 25.06.2014 by reversing the judgment and decree passed in O.S.No.75/2008 on the file of the Principal District Munsif-cum Judicial Magistrate, Tiruchendur dated 27.07.2010 by allowing the Second Appeal.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S S.KADARKARAI, Advocate for the petitioner and of M/S.R.MAHALAKSHMI, Advocate on behalf of the Respondents 2 to 5, the Court made the following order:-

This petition is filed to implead the respondents 5 to 8 herein as respondents 6 to 9 in the above second appeal.



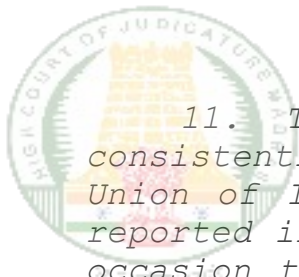
2.The respondents 5 to 8 are legal representatives of the deceased first respondent, who according to the petitioner died even while the first appeal was pending. In such a case, the proper procedure open to the petitioner would be to file a petition to amend the cause title to include the names of legal representatives of the deceased first respondent along with the petition to condone the delay in filing the second appeal against the said legal representatives.

3.This Court while considering similar issue in **Amsavalli Vs Sarangapani** reported in **2015 (1) MLJ 285**, observed as follows:-

"10. In this regard, let us have a survey of the judgments from various Courts. The earliest judgment on this issue is from a Full Bench of this Court in *Adusumili Gopalakrishnayya and another v. Adivi Lakshmana Rao* reported in AIR 1925 Madras 1210 : 1926 XXIII L.W. 418. That was a case where the appeal was presented against a person (Respondent) who was dead on the date of presentation of the appeal before the appellate Court without knowing the fact that the respondent had passed away already after the passing of the decree. The question before the Full Bench was whether the appeal memorandum should be returned for amendment for re-presentation or to permit the appellant to amend the cause title under Section 153 of C.P.C. Before the Full Bench, a Division Bench judgment of this Court in *Govinda Kaviraj Purohita v. Gauranga Saw* reported in 18 L.W. 54 was cited wherein, the Division Bench had dismissed the second appeal as incompetent as the same had been presented against a dead person. The Division Bench also had declined to exercise its power to correct errors under Section 153 of C.P.C. This was not agreeable for the Full Bench. The Full Bench observed that if the appeal memorandum is not allowed to be amended, the party may apply for a refund of the spoilt stamp and may present a fresh appeal. In any case, if the appeal is out of time, against the legal representatives, the court has to excuse the delay in presentation before it and then can proceed to hear the appeal. Taking note of the said situation, in order to simplify the procedure the Full Bench has held as follows:

"Although the appeal may be incompetent owing to the wrong person being named as respondent, the Court which deals with it is acting in a proceeding in a suit and as such has full power under Sec.153 to direct an amendment of the appeal memorandum.

As observed by Ramesam and Wallace JJ. in C.M.P.No.2807 of 1923 the question resolves itself into one of Court Fees only and if the party has only made an unintentional error in inserting the name of the wrong respondent in his appeal memorandum, there is no reason to make him pay Court-fees twice over, and it is simpler for the Court to direct an amendment of the cause title."



11. This judgment of the Full Bench of this Court is consistently followed by many High Courts, including this Court. In *Union of India and another v. K. Abborvam (Deceased)* and 15 others reported in 1995 (II) CTC 329 a Division Bench of this Court had an occasion to follow the above Full Bench Judgment. That was a case where the first respondent in the appeal died on 24.05.1990, but the appeal was presented only on 11.06.1990 against the first respondent as if he were alive. The Division Bench, taking note of the same, had held that the appeal presented against the dead man is not valid. The Division Bench was not however inclined to dismiss the appeal on such a technical ground, but, instead, it again reiterated the simple procedure to be followed in such a situation as formulated by the Full Bench of this Court in *Adusumili Gopalakrishnayya* (cited supra). The Division Bench in para 2 has held as follows:-

"2. In such a case, the procedure to be followed by the appellant has been prescribed by a Full Bench of this Court in *Alusumilli Gopala Kristnayya and Anr. v. Alivi Lakshmana Rao*, (A.I.R. 1925 Madras 1210). The remedy of the appellant is to seek amendment of the cause title of the appeal by showing the names of the legal representatives of the deceased respondent and also applying for condonation of delay in filing the appeal."

4. Hence, the present petition filed to implead the respondents 5 to 8 herein as respondents 6 to 9 in the above second appeal is dismissed with liberty to file appropriate application as indicated above.

sd/-

09/01/2023

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/02/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE SUBORDINATE JUDGE,
THOOTHUKUDI.

2 THE PRINCIPAL DISTRICT MUNSIF
CUM JUDICIAL MAGISTRATE, TIRUCHENDUR

ORDER

IN

CMP(MD) No.12137 of 2022

IN

SA(MD) No.392 of 2015

Date : 09/01/2023

SS/MMS/SAR-III/01.02.2023/3P/3C