



S.A.(MD).No.48 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.07.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

S.A.(MD).No.48 of 2024
and C.M.P.(MD).No.1032 of 2024

S.Nallasamy (Died) ... Appellant/Defendant
1.Gandhimathi
2.Nallamuthu
3.Shanmugapriya
4.Gomathy ... Appellants/Lrs of the defendants
(Cause title accepted vide Court order dated 08.08.2023 made in C.M.P.
(MD).No.9426 of 2023 in S.A.(MD).No.SR49534 of 2023)
Vs.

K.K.Nallasamy ... Respondent/Respondent

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 16.07.2018 passed in A.S.No.18 of 2014 on the file of the Principal District Court, Karur, confirming the judgment and decree dated 26.11.2013 passed in O.S.No.131 of 2008 on the file of Additional Sub Court, Karur.

For Appellants : Mr.S.Shyllappa Kalyan

For Respondent : Mr.C.Deepak



S.A.(MD).No.48 of 2024

JUDGMENT

WEB COPY

This appeal has been filed against the judgment and decree dated 16.07.2018 passed in A.S.No.18 of 2014 on the file of the Principal District Court, Karur, confirming the judgment and decree dated 26.11.2013 passed in O.S.No.131 of 2008 on the file of Additional Sub Court, Karur.

2.The suit in O.S.No.131 of 2008 was filed seeking the relief of specific performance with the following averments:

The defendant namely the Nallasamy S/o. Samiappa Gounder, along with one S.Subramani S/o Samiappa Goundar and one Nallasamy S/o Ponnappa Gounder, entered into sale agreement with the plaintiff in respect of the properties situated in S.Nos.814/2, 814/1 & 814/3 measuring about 1.38, 1.78 and 1.54 acres respectively for a sum of Rs.7,28,500/- on 12.02.2007. They received Rs.1,50,000/- as advance. The balance amount was agreed to be paid within four months from the date of agreement. The plaintiff always ready and willing to perform his part of contract. In spite of repeated request, the demand was not properly complied. So notice was issued in the form of telegram on 09.06.2007.



S.A.(MD).No.48 of 2024

Except the defendant, the other two persons namely S.Subramani and P.Nallasamy, executed sale deeds in respect of their properties on 11.06.2007. But, the defendant failed to execute the sale deed. So, another notice was sent on 02.07.2007. It was received by the defendant. But, there was no proper reply. Hence, the suit was filed for specific performance and for costs.

3.The defendant filed his written statement refuting the contentions stating that no such agreement was entered between the plaintiff and himself. He borrowed a sum of Rs.5,000/- from the plaintiff. At that time his signature was obtained in empty stamp papers and blank papers. He was paying the interest to the plaintiff regularly. The property is not absolute property of the defendant. It is ancestral property. He is only co-sharer. The property is valuable more than that of the claim made by the plaintiff.

4.On the basis of the pleadings, the trial Court framed the following issues.

1. Whether the sale agreement dated 12.02.2007 is true and valid?



S.A.(MD).No.48 of 2024

2. Is the suit bad for non-joinder of necessary parties?
3. To what Relief the plaintiff is entitled?

5.Before the trial Court, on the side of the plaintiff, two witnesses were examined and 7 documents were marked. On the side of the defendant, two witnesses were examined and no documents were marked.

6.At the conclusion of the trial process, the suit was decreed as prayed for with costs. Against the above said decree and judgment, the defendant filed appeal before the Principal District Judge, Karur, in A.S.No.18 of 2014. That was came to be dismissed with costs. Against the above said dismissal, this second appeal is preferred.

7.Heard both sides.

8.No question of law was framed, because of the following development. Along with the grounds of appeal, C.M.P.(MD).No.9426 of 2023 was filed by the appellant herein to accept the cause title with the



S.A.(MD).No.48 of 2024

following averments. The affidavit was filed by the first petitioner/first appellant namely Gandhimathi, who is the wife of the deceased Nallasamy. She has stated that her husband died on 13.10.2015 during the pendency of the first appeal. But, the appellate Court was not informed about the death. There is a delay of 401 days in bringing the legal heirs of the deceased defendant on record and dismissal order was not brought to their notice. It was known to them only on 02.01.2020. After that they have approached their Advocate and filed the present appeal memorandum. On that ground, they wanted to accept the cause title. That petition was allowed by the order, dated 08.08.2023 and their cause title was accepted.

9.Now, the only point which arises for consideration is whether this appeal itself is maintainable in view of the death of the defendant Nallasamy during the appeal proceedings before the Principal District Judge, Karur, in A.S.No.18 of 2014. Judgment was pronounced on 16.07.2018. As mentioned above, appeal was preferred by the deceased Nallasamy on 02.06.2014 and he died on 13.10.2015. The counsel appearing for the Nallasamy ought to have informed the appellate Court



S.A.(MD).No.48 of 2024

about the death. Equally duty is cast upon the respondent/plaintiff herein to inform the Court about the death. Both failed to inform the Court. The learned counsel was not properly instructed to inform the Court about the death of Nallasamy. Without the knowledge of the same, the appeal was heard and after framing points for consideration, it was dismissed.

10.The learned counsel for the respondent would submit that when the judgment was pronounced by the appellate Court, the appellant was dead, it is nothing but nullity. Against which, this second appeal will not lie. In the ground of appeal nothing has been stated with regard to the question of nullity. Even in the drafted substantial question of law, such point was not raised.

11.Since the main point to be decided is only with regard to the issue of nullity, the following question of law is framed for answering.

1. Whether the judgment and decree of the appellate Court is nullity in virtue of the death of the appellant on 13.10.2015?

12.Now, we will straight away go to the judgment of the



S.A.(MD).No.48 of 2024

Honourable Supreme Court reported in *Amba Bai and Ors. Vs. Gopal*

and Ors. reported in *AIR 2001 SC 2003*. For better understanding, let me narrate the facts in that matter. One *Laxmi Lal* filed suit for specific performance against one *Radhu Lal*. The suit was dismissed by the trial Court. Appeal was preferred against the dismissal. It was allowed. The second appeal was preferred before the High Court. Pending the second appeal, the plaintiff namely *Laxmi Lal* died. Legal representatives were brought on record as respondents in the second appeal. Pending the second appeal *Radhu Lal* also died. But, that fact was not brought to the notice of the Court. But, the appeal was dismissed on 23.05.1991. Legal heirs of the deceased *Radhu Lal* did not take any steps to have the judgment in the second appeal set aside.

13. Since *Laxmi Lal* died, their legal representatives filed execution petition against the legal heirs of *Radhu Lal*. It was resisted on the ground that the decree and judgment passed against dead person is nullity and so it cannot be executed. But, that contention was not accepted by the execution Court. But, the second appeal preferred by the *Radhu Lal* got abated and so the decree passed by the first appellate



S.A.(MD).No.48 of 2024

Court can be accepted.

WEB COPY

14.It was challenged before the High Court in revision. The High Court has held that decree passed in the second appeal is nullity and therefore, decree now for execution was nullity. So, it ordered the dismissal of the execution proceedings. By that way, the matter came up before the Honourable Supreme Court.

15.It was contended before the Honourable Supreme Court that the decree passed in the second appeal is nullity, which was passed against dead person. Para 7 of the above said judgment is extracted hereunder for better appreciation:

“In the instant case, deceased Radhu Lal, the second appellant died on 14.12.1990 and his death was not brought to the notice of the Court and the learned Single Judge disposed of the appeal on merits by dismissing the Second Appeal on 25.3.1991. As the Judgment in the Second Appeal was passed without the knowledge that the appellant had died, the same being a judgment passed against the dead person is a nullity. When the second appellant Radhu Lal died on 14.12.1990, his legal



representatives could have taken steps to get themselves impleaded in the Second Appeal proceedings and as it was not done, the Second Appeal should be taken to have abated by operation of law. Therefore, the question that requires to be considered is that when there was abatement of the Second Appeal, can there be a merger of the same with the decree passed by the First Appellate Court?”

16.In that matter the question of merger was also considered. But, by virtue of the above said observation, it is clear on record that when the legal heirs of the appellant namely Nallasamy were not brought on record within 90 days from the date of death, automatically it got abated. So, the decree passed against the dead person be nullity. There can be no quarrel on the proposition of law. The effect of abatement was considered by the Honourable Supreme Court. The following observation has been made by the Honourable Supreme Court over the consequential abatement.

“When the second appeal had abated and the legal representatives of the appellant were not brought on record, the decree, which was passed the First Appellate Court, would acquire finality.”



S.A.(MD).No.48 of 2024

WEB COPY

17. Since the decree passed by the appellate Court is nullity, the decree passed by the trial Court has acquired finality. So the effect of decree passed by the trial Court is further clarified by the Honourable Supreme Court by extracting the Judgment in ***Rahmani Khatoon Vs. Harkoo Gope*** reported in ***(1981) 3SCR 553***, which can be extracted hereunder:

“The concept of abatement is known to civil law. If a party to a proceeding either in the trial court or any appeal or revision dies and the right to sue survives or a claim has to be answered, the heirs and legal representatives of the deceased party would have to be substituted and failure to do so would result in abatement of proceedings. Now, if the party to a suit dies and the abatement takes place, the suit would abate. If a party to an appeal or revision dies and either the appeal or revision abates, it will have no impact on the judgment decree or order against which the appeal or revision is preferred. In fact, such judgment, decree or order under appeal or revision would become final.”



S.A.(MD).No.48 of 2024

18.In the concluding portion, the following observation has been made by the Honourable Supreme Court.

“In the instant case, there is no question of the application of the doctrine of merger. As the second appellant Radhulal died during the pendency of the appeal, and in the absence of his legal heirs having taken any steps to prosecute the Second Appeal, the decree passed by the First Appellate Court must be deemed to have become final. By virtue of the order passed by the First Appellate Court, the plaintiff’s suit for specific performance was decreed. Failure on the part of the legal heirs of Radhulal to get themselves impleaded in the Second Appeal and pursue the matter further shall not adversely affect the plaintiff-decree holder as it would be against the mandate of Rule 9 of Order 22, Code of Civil Procedure.”

So this fixes the issue.

19.The appellant has not prosecute the matter legally. As mentioned above, even in the grounds of appeal, no such plea was raised



S.A.(MD).No.48 of 2024

that decree passed by the appellate Court itself is nullity. In short as mentioned above, the grounds of appeal preferred only against the merits and not against the legality. Against an order of nullity, this second appeal has been preferred without mentioning the same. So the second appeal itself is not maintainable, deserves to be dismissed.

20. Accordingly, this second appeal stands dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

23.07.2024

Index : Yes / No
Internet : Yes / No
TM

To

1. The Principal District Judge, Karur.
2. The Additional Sub Judge, Karur.
3. The Section Officer,
E.R. Section/V.R. Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



S.A.(MD).No.48 of 2024

G.ILANGO VAN,J.

TM

S.A.(MD).No.48 of 2024

23.07.2024