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S.A.No.752 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

S.A.No.752 of 2008
and M.P.No.1 of 2008

Martin Selvam,
Represented by Selvapuram Village Mirasdars and Pattadars.

... Appellant

Vs.

1. Mahalingam

2. Sundaram

3. Jayaraj

4. Kaliaperumal

5. Shanmugam

... Respondents

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 21.04.2006 in A.S.No.118 of 2005 on the file of the Subordinate Judge, Thiruvarur, concurring the judgment and decree dated 17.08.2005 made in O.S.No.94 of 1997 on the file of the District Munsif-cum-Judicial Magistrate, Nanilam.



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For Appellant : Mr.V.Anil Kumar

For Respondent : Mr.M.Thamizhavel
Nos.1 to 4

Respondent No.5 - Dismissed as abated
vide order dated 15.07.2021.

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JUDGMENT

This Second Appeal has been filed against the judgment and decree dated 21.04.2006 in A.S.No.118 of 2005 on the file of the Subordinate Judge, Thiruvarur, concurring the judgment and decree dated 17.08.2005 made in O.S.No.94 of 1997 on the file of the District Munsif-cum-Judicial Magistrate, Nannilam.

2. The 2nd plaintiff in O.S.No.94 of 1997 on the file of the District Munsif-cum-Judicial Magistrate, Nannilam, is the appellant in this Second Appeal. The appellant along with two others filed the suit in O.S.No.94 of 1997 for declaring that the plaintiffs are entitled to fishing right in the two tanks known as Thamarai Kulam and Madha Kulam. The suit was also filed for consequential relief restraining the defendants or his relatives from interfering with the peaceful enjoyment of the fishing right by the plaintiffs.



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3. It is pertinent to mention that the plaintiffs filed the suit in a representative capacity as if the suit has been filed on behalf of the plaintiffs as well as the Village Mirasdars and Pattadars. The defendants also were shown in a representative capacity representing the villagers of Selvapuram. In the written statement, it is contended that the plaintiffs are not the representatives of Mirasdars and Pattadars and that the defendants are not the representatives of Villagers.

4. This Court has read the judgments of the Courts below in the suit and in A.S.No.118 of 2005. The suit was dismissed by the trial Court after taking note of the facts that the suit along with applications under Order I Rule 8 of C.P.C. seeking permission to file a suit in a representative capacity, was dismissed by order dated 11.06.1998. Similarly, an application is filed seeking permission to show the defendants in a representative capacity to confirm that the defendants were also impleaded not only for themselves but also to represent the villagers of Selvapuram Village. Both applications were dismissed on the same day. Later, the suit itself was dismissed for non-prosecution. The 2nd plaintiff/appellant has not taken any steps to restore the applications filed under Order I Rule 8 of C.P.C. However, it was contended by the appellant that the suit was dismissed for non-prosecution and that on the



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restoration of suit, both the applications filed under Order I Rule 8 of C.P.C. should get restored.

5. The learned counsel for the appellant admits that the applications filed under Order I Rule 8 of C.P.C. were also dismissed for non-prosecution. Now, a strange argument is advanced by the learned counsel for the appellant relying upon the judgment of the High Court of Andhra Pradesh in the case of ***Nondipati Rani Reddy and Others Vs. Nandipadi Padma Reddy and Others*** reported in ***A.I.R. 1978 Andhra Pradesh 30***, wherein it is held as follows:-

"Which the suit is restored the interlocutory orders and their operation during the period of interregnum are revived.

Once the order of dismissed is act aside, the plaintiff must be restored to the position in which the was situated when the Court dismissed the suit for default.

Therefore, it follows that the interlocutory orders, which had been passed before the order of dismissal, would also be revived along with the suit when the order of dismissal has been act aside and the suit has been restored."

The above-judgment was interpreted by the appellant's counterpart before the lower Court stating that the applications filed under Order I Rule 8 of C.P.C.



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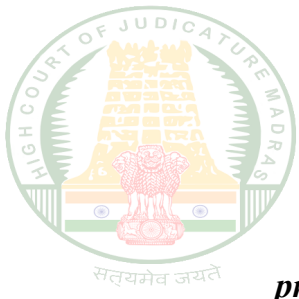
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will revive once the suit itself is restored. The learned Judge rightly held that the applications filed under Order I Rule 8 of C.P.C have been dismissed. When the dismissed applications were not taken on record after restoration and the appellant has not challenged the order even in this proceedings, the plaintiffs, who have been denied permission to file the suit in a representative capacity cannot get any relief. In other words, since the relief is prayed by few people in a representative capacity and the plaintiff never claimed exclusive right on dismissal of the applications, he loses his right to prosecute the suit as the cause of action does not survive. In the said circumstance, this Court is unable to entertain the appeal on merits.

6. The questions of law raised by the appellant in this Second Appeal are as follows:-

"(i) Whether the Trial Court and the Appellate Court erred in deciding on the issue that the suit is on representative capacity, after having allowed the same question of law in I.A.No.314 of 1997 filed under Order I Rule 8? and

(ii) Whether the plaintiff is entitled for declaration as



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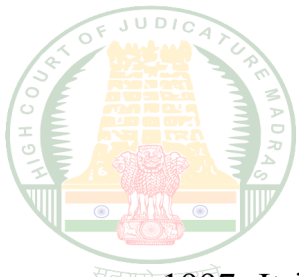
prayed for."

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The questions of law framed by the appellant in this appeal are inappropriate. They give a clear indication that the focus of the 2nd plaintiff/appellant is not a relief on the basis of cause of action alleged in the plaint.

7. The learned counsel appearing for the appellant submitted that the substantial question of law formulated by this Court for determination in the Second Appeal is "***the suit was dismissed for default and thereafter restored to file. Whether the Courts below are justified in coming to the conclusion that the appellant should have in addition to restoring the suit, should have also filed two separate Applications to restore I.A.Nos.313 and 314 of 1997, and that the appellant cannot maintain the suit without restoring I.A.Nos.313 and 314 of 1997?***

8. On the admitted facts, the conclusion of the learned Judge that the appellant cannot maintain the suit without restoration of I.A.Nos.313 and 314 of 1997 is correct. In none of the grounds, the appellant would pray for time at least to file an application for restoration of I.A.Nos.313 and 314 of 1997. The appellant has not even questioned the order in I.A.Nos.313 and 314 of



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1997. It is to be seen that even though the appellant has not filed an appeal or revision as against the order dismissing these two applications. it is open to him to canvass the correctness of the order if the order goes to the root of the matter. In the present case, in the absence of any challenge to the order, this Court is unable to conceive of the appellant thinking of filing an application for restoration of I.A.Nos.313 and 314 of 1997. The suit tank belong to Mirasdars and Pattadars of Selvapuram Village. It is still open to the Mirasdars or Pattadars of the village to file another suit in a representative capacity. Therefore, the substantial questions of law framed by this Court are answered against the appellant.

9. Further, it is also brought to the notice of this Court that out of three persons, who represented the larger body and who filed the plaint representing the larger body, only one person has filed the First Appeal challenging the judgment and decree of the trial Court. The learned counsel appearing for the appellant now stated that the other two have not joined with the 2nd plaintiff/appellant and therefore, the appeal was filed by one individual. The Second Appeal is also filed by one of the three persons, who jointly filed the plaint before the trial Court. In such capacity, it is also noticed that there is no chance for seeking restoration of the applications filed under Order I Rule 8



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of C.P.C, as some of the people, who originally joined with the plaintiff, have not come forward to prosecute the appeal. It is stated that other two persons are no more and did not join with the 2nd plaintiff/appellant.

10. Hence, there is no merit in the Second Appeal and accordingly, it is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

10.02.2025

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To

- 1.The Subordinate Judge, Thiruvarur.
- 2.The District Munsif-cum-Judicial Magistrate, Nannilam.
Nagapattinam District.



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