



S.A. No. 656 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05.11.2025
Pronounced on	02.02.2026

CORAM

THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

S.A.No.656 of 2023

Sakadevan (died)

2. Saraswathi

3. Kumaran Gandhi

4. Kavithagandhi

5. Arulgandhi

...Appellants

Sole appellant died, A2 to A5 are brought on record as lrs of the deceased sole appellant vide court order dated 19.06.2025 made in C.M.P. No.5113 of 2025 in S.A.No.656 of 2023.

Vs.

1. Raman

Rani (died)

2. Panjali

3. Gomathi

...Respondents

Prayer: Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 23.12.2021 passed in A.S. No.18 of 2021, on the file of the Additional District Court, Dharmapuri, reversing the Judgment and decree dated 31.01.2019 passed in O.S. No.63 of 2013, on the file of the Sub Court, Dharmapuri.



S.A. No. 656 of 2023

WEB COPY

For Appellants : Mr.P. Valliappan, Senior Advocate
for Mr. T.Deeraj of M/s. PV Law Associates
For Respondents: Mr. S. Dinuprashanth

JUDGMENT

The present Second Appeal is preferred against the judgment and decree dated 23.12.2021 in A.S. No.18 of 2021 on the file of Additional District Court, Dharmapuri, reversing the judgment and decree dated 31.01.2019 passed in O.S. No.63 of 2013 on the file of the Sub Court, Dharmapuri.

2. The unsuccessful plaintiff before the first appellate court has preferred the present Second Appeal.

3. The parties are referred to as per their ranking in the trial court.

4. According to the plaintiff, he filed the suit in O.S. No.95/1992 before Sub Court, Dharmapuri, for the relief of declaration to declare the tractor bearing Registration No. TDD 2369, 1987 model Mahindra



S.A. No. 656 of 2023

Tractor belongs to the plaintiff and for recovery of possession. The said suit was dismissed on 28.02.1997, against which the plaintiff preferred an appeal in A.S. No.52/1997 before III Additional District Court, Krishnagiri. On 07.04.1998, judgment was passed holding that the tractor jointly belong to the plaintiff and his brother Beeman and the suit was dismissed as against the other reliefs. Aggrieved by this the plaintiff preferred a Second Appeal in S.A. No.430/2003 before this Court in which judgment and decree was passed holding that the plaintiff is entitled to the declaratory relief, that he is the owner of the tractor and also directed the defendant therein to hand over possession of the tractor within a period of two months. This Court further ordered that the plaintiff is entitled to claim damages in separate proceedings.

4.1. On 30.06.2010, the plaintiff issued a legal notice to the defendants herein to pay a sum of Rs.5,00,000/- as damages and to hand over the tractor, for which the defendants sent a reply notice. The further contention of the plaintiff is that, since the said Beeman and the defendants herein were using the tractor for agricultural purpose and earning money, they are liable to pay damages to the tune of Rs.5,00,000/- to the plaintiff. The plaintiff had also paid a sum of Rs.3,80,000/- and discharged the loan borrowed for purchasing the



S.A. No. 656 of 2023

tractor, to Canara Bank. The defendants, as legal heirs of the deceased Beeman, who are in possession and enjoyment of the tractor belonging to the plaintiff, are liable to pay damage of Rs.5,00,000/- to the plaintiff.

4.2. *Per contra*, the claim of the plaintiff is resisted by the defendants contending that the tractor was jointly purchased by the plaintiff and his brother Beeman by obtaining loan from Canara Bank, Dharmapuri, and they are in common possession and enjoyment of the same. While so, due to misunderstanding between them, the plaintiff filed the suit in O.S. No.95/1992 against Beeman and Canara Bank and the same was dismissed by the trial court. Aggrieved by this, the plaintiff filed the appeal in A.S. No.52/1997 in which the first appellate court passed the judgment and decree holding that both the plaintiff and Beeman are jointly entitled to the tractor. Challenging the same, the plaintiff preferred the Second Appeal before this Court. During pendency of the Second Appeal, the said Beeman died on 10.06.2009 and the plaintiff suppressed the death of Beeman and without taking any steps to implead his legal heirs, obtained an *ex parte* judgment in S.A. NO.430/2003 on 12.01.2010. The judgment and decree passed against a dead person is not valid and will not bind the defendants. Hence, prayed for dismissal of the suit.



S.A. No. 656 of 2023

WEB COPY

5. The trial court, after framing necessary issues and based on the materials on record, decreed the suit in favour of the plaintiff. Assailing the same, the defendants preferred the appeal in A.S. No.18/2021 before Additional District Court, Dharmapuri. The first appellate court allowed the appeal holding that the plaintiff is not entitled to any relief in the suit, as the plaintiff obtained the judgment and decree in S.A. 430/2003 without disclosing the death of Beeman and without impleading his legal heirs and the same is a nullity and not binding upon the defendants.

6. Aggrieved by the decree and judgment of the first appellate court, the present Second Appeal is preferred by the plaintiff on the following substantial questions of law:

“1. When the provisions of Order 22 Rules 4(4), 6 and 10A of the Code of Civil Procedure, postulate the legal representatives of a party remaining ex parte need not be brought on record and when there is no communication by any adversary counsel regarding the death of Bheeman, as he failed to engage any lawyer, is the lower Appellate Court justified in concluding that Judgment passed by this Court in S.A.No.430 of 2003 is a nullity?



S.A. No. 656 of 2023

WEB COPY

2. Is a District Court competent to declare the verdict of High Court a nullity in an ensuing proceeding?

3. Whether the lower appellate Court is correct in law in dismissing a suit on an issue, not framed by the Trial Court, as the aggrieved party could not have let evidence in that regard and is taken by surprise in Appeal?

4. Is the lower appellate Court empowered under Order 41 Rule 31 of the Code of Civil Procedure to frame points for determination, which have no nexus with the issues framed by the trial Court?

5. When the judgment and decree passed by this Court in S.A.430 of 2003 dated 12.01.2010 under Exhibits A3 & A4 have become final and cannot be meddled with, is the lower appellate Court correct in law in rendering them nugatory?"

7. During pendency of this Second Appeal, the plaintiff Sahadevan died and his legal heirs namely the appellants 2 to 5 were brought on record as his legal representatives. The learned counsel appearing for the appellants would submit that the 1st appellant, Late Sahadevan preferred the Second Appeal No.430/2003 assailing the judgment and decree passed in A.S. No.52/1997 by the III Additional District Court, Krishnagiri. The



S.A. No. 656 of 2023

respondent therein, Late Beeman, despite service of notice failed to contest the Second Appeal. Accordingly this Court, upon consideration of the pleadings and material on record, allowed the Second Appeal, declaring the 1st appellant, Late Sahadevan, as the owner of the said tractor and granted the relief of recovery of possession. This Court further granted liberty to the 1st appellant Late Sahadevan to initiate separate proceedings for damages. Hence, he preferred the present suit in O.S. NO.63/2013 claiming damages of Rs.5,00,000/- stating that he discharged the loan borrowed for purchasing the tractor to the Canara Bank. The respondents, being the legal heirs of Late Beeman, are liable to pay the damages for using the tractor. The trial court, upon considering the material on record, rightly decreed the suit in favour of the plaintiff. However, the same was reversed by the first appellate court. The learned counsel for the appellants would submit that the impugned judgment of the first appellate court suffers from material irregularities and misapplication of settled legal principles warranting interference by this Court under Sections 100 and 103 of the Code of Civil Procedure, 1908. He would contend that the first appellate court erred in reversing the well reasoned findings of the trial court, in contravention of the mandate under Order XLI Rule 31 of CPC. No specific issue was framed by the trial court with respect to the validity of the judgment and decree dated



S.A. No. 656 of 2023

10.06.2009 in S.A. No.430/2003, following the death of Late Beeman.

Consequently, the appellants were deprived of an opportunity to adduce evidence on that issue. Hence, the appellate court erred in dismissing the suit on an issue not framed by the trial court. He would further submit that the first appellate court failed to appreciate that Late Beeman, though duly served with notice in S.A. No.430/2003, did not enter appearance or engage counsel for over six years, until his demise on 10.06.2009. He thus chose to remain *ex parte*, and it was not necessary to substitute his legal representatives in terms of Order XXII Rule 4(4) (Madras High Court Amendment) to the Code of Civil Procedure, 1908, inserted by Act 104 of 1976, which reads as follows:

“The Court, whenever it sees fit, may exempt the plaintiff from the necessity of substituting the legal representative of any such defendant who has been declared ex parte or who has failed to file a written statement, or who, having filed it, has failed to appear and contest at the hearing; and the judgment may in such case be pronounced against the said defendant notwithstanding his death, and shall have the same force and effect as if pronounced before his death”



S.A. No. 656 of 2023

WEB COPY

8. In this regard, the learned counsel for the appellants has placed reliance upon the judgments in (i) ***Krishnaveni and others vs. Ramachandra Naidu and others*** reported in ***1998(1) CTC 423***, and (ii) ***Chellakkon and others vs. Kumaravelu*** reported in ***2013(1) MWN (Civil) 260***, in which it is held that exemption from substitution of legal representatives of a deceased defendant may be granted at any time before pronouncement of judgment, even without a formal application. Hence, in view of Order XXII Rule 4(4) and 6 of the Civil Procedure Code, the question of abatement does not arise. Considering the conduct of Late Beeman, this Court has rightly allowed the Second Appeal in S.A. No.430/2003 and therefore, the findings of the first appellate court that the decree was a nullity is wholly untenable. He would further contend that the first appellate court failed to note that no intimation regarding the death of Late Beeman was furnished to the 1st appellant during the pendency of S.A. No.430/2003 as required under Order XXII Rule 10-A of the Code of Civil Procedure. The Hon'ble Supreme Court in ***Binod Pathak vs. Shankar Choudhary and others*** reported in ***2025 SCC Online SC 1411*** has held that, failure to inform the Court about the death of a party under Order XXII Rule 10-A constitutes wrongful act, and the defaulting party cannot take advantage of the abatement that results



S.A. No. 656 of 2023

therefrom. The respondents have not specifically denied their knowledge of the decree passed in S.A. NO.430/2003 on 12.01.2010 and such non denial constitutes an admission under Order VIII Rule 5 of the Code of Civil Procedure. In spite of repayment of the tractor loan by Late Sahadevan, neither he nor his legal heirs are able to enjoy the possession of the tractor. Hence, prayed for allowing the Second Appeal.

9. On the other hand, Mr.S.Dinuprashanth learned counsel appearing for the respondents / defendants would submit that, the plaintiff in the present suit has filed the above suit based upon the judgment and decree in S.A. No.430/2003 and the same was obtained against a dead person. The plaintiff failed to disclose the death of Beeman and without impleading the legal heirs of deceased Beeman in the Second Appeal, obtained the judgment and decree which is not binding upon the respondents / defendants. The first appellate court, upon considering the factual and legal aspect of the case on hand, rightly dismissed the suit filed by the plaintiff, which warrants any interference by this Court.

10. Heard on both sides. Records perused.



S.A. No. 656 of 2023

WEB COPY

11. It is the specific contention of the appellants that, Late Beeman, respondent in S.A. 430/2003, despite service of notice, did not appear in the Second Appeal. Hence, this Court rightly allowed the above Second Appeal. He would contend that in terms of Order XXII Rule 4(4) of the Code of Civil Procedure, 1908, the Court may exempt the plaintiff from the necessity of substituting the legal representative of the defendants, who has been declared *ex parte* or having failed to appear and contest at the hearing, judgment may in such case be pronounced against the said defendant notwithstanding his death, and shall have the same force and effect as if pronounced before his death. He would further contend that under Order XXII Rule 10-A of CPC, failure to inform the court of the death of a party, constitutes a wrongful act and the defaulting party cannot take advantage of the abatement that results there from and that, in view of Order XXII Rule 4(4) and 6 of the Code of Civil Procedure, the question of abatement does not arise.

12. In view of the above, this Court has to exempt the plaintiff from substituting the legal representatives of the defendant, who has failed to file a written statement or who having filed it, has failed to appear and



S.A. No. 656 of 2023

contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place. It means that, the defendant has been continuously remained *ex parte* during trial. In such case, there is no need for plaintiff to implead his legal representatives into the suit and they are very much entitled to get exemption. But in the case on hand, Late Beeman, respondent in S.A. 430/2003 died during pendency of the above Second Appeal. He did not enter appearance or engage counsel in the Second Appeal. Under Order XXII Rule 10-A of the Code of Civil Procedure dictates that if a respondent dies during Second Appeal, their pleader has a mandatory duty to inform the Court of the death as soon as they become aware of it. This provision (inserted by the 1976 Amendment Act) aims to reduce hardships caused by ignorance of a party's death, preventing the unintentional abatement of appeals. But in the present case, the deceased Beeman was not represented by any lawyer. Order XXII Rule 10-A of CPC stipulates that the Advocate who filed vakalat on behalf of the respondent / defendant, has to inform the Court about the death of the respondent / defendant and therefore, the plaintiff herein cannot seek any exemption under this provision from impleading the legal representatives of the deceased Beeman. It is



S.A. No. 656 of 2023

significant to note that, the said Beeman is the brother of the appellant / plaintiff in S.A. No.430/2003. Since the appellant and the respondent in S.A. No.430/2003 were close relatives, it cannot be believed that the appellant / plaintiff was not aware of the death of his brother, namely respondent / defendant. The appellant / plaintiff therein ought to have filed necessary application to implead the legal representatives of the deceased Beeman within 90 days. Without impleading the legal heirs of deceased Beeman, the decree passed by this Court has become a nullity. The Hon'ble Supreme Court in *Amba Bai and others vs. Gopal and others* reported in *2001 5 SCC 570* and in *Gurnam Singh (dead) through legal representatives and others vs. Gur Bachan Kaur (dead) by legal representatives* reported in *(2017) 13 SCC 414*, has held that, where during the pendency of Second Appeal, if the sole appellant or respondent dies and his legal heirs were not brought on record, the decree passed in the Second Appeal would be a nullity. In such cases, the decree and order of the first appellate court would become final. As per the ratio laid down in the above decisions, the decree passed by this Court in S.A. 430/2003 ought to be treated as nullity. Moreover, in the instant case, death of Beeman took place on 10.06.2009 and the judgment and decree in S.A. No.430/2003 was passed 12.01.2010 i.e., after ninety days period of limitation to move an application for substitution and sixty days limitation



S.A. No. 656 of 2023

period to set aside abatement. Therefore, the appeal is abated at the expiry of 90th day from the date of the death of Beeman. It is well settled position of law that, judgment and decree passed after the death of the respondent without impleading the legal representatives is a nullity and its validity can be questioned in any proceedings including collateral proceedings, whenever such a decree is sought to be enforced by the decree holder. In the present case, the plaintiff failed to file any application to bring on record the legal heirs of the deceased Beeman within 90 days from the date of his death, the Second Appeal in S.A. No.430/2003 had abated. The first appellate court has rightly held that since the judgment and decree passed by this Court in S.A. No.430/2003 is a nullity, and the same is not binding upon the defendants and the plaintiff is not entitled to maintain the present suit and that the plaintiff has to work out his remedy before proper forum on the basis of judgment and decree passed in A.S. 52/1997. No perversity or infirmity is found in the judgment and decree passed by the first appellate court, which warrants interference by this Court. Accordingly, all the substantial questions of law are answered against the appellant.



S.A. No. 656 of 2023

13. In the result,

WEB COPY

- i. The Second Appeal is dismissed. No costs.
- ii. The decree and judgment dated 23.12.2021 passed in A.S. No.18 of 2021, on the file of the Additional District Court, Dharmapuri, is upheld.

02.02.2026

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The Additional District Judge, Dharmapuri
2. The Sub Court, Dharmapuri.
3. The Section Officer, VR Section, High Court, Madras.



WEB COPY



S.A. No. 656 of 2023

K.GOVINDARAJAN THILAKAVADI,J.
bga

Pre delivery judgment in
S.A.No.656 of 2023

02.02.2026