

IN THE COURT OF DISTRICT MUNSIF, VADIPATTI, MADURAI DT.

Present: Thiru.D. Ramganesh M.A.,B.L.,
District Munsif.

14th day of October 2019 Monday

O.S.No.174/2009

S. Pitchai : Plaintiff

//Versus//

S. Velan : 4th Defendant

This memo has been filed before this court on the side of 4th defendant and it was taken on 26.06.2019 and Advocate Thiru. M. Raja Saravanan appeared for the defendants and Thiru. N.C.R. Janagan appeared for the Plaintiff, and this memo came before me for final hearing on 30.09.2019 upon perusing the available material records and having stood over for consideration till this day, today this court delivered the following...

ORDER

The 4th defendant has filed this death intimation memo, stating that the 1st defendant died on 08.05.2017.

2. Objection statement of Plaintiff

The 4th defendant filed death intimation memo stating that 1st defendant died on 08.05.2017. But memo was filed with 784 days delay. As per order 22 Rule 3(1)(2) the death intimation should be given within 90 days and as per order 22 Rule (4)(1)(2)(3)(4)(5) it should be given in prescribed time. Hence as per limitation Act this memo cannot accepted. Since it has been intimated after the lapse of prescribed time. Hence this suit is liable to be abetted against D1. IN this regarding the counsel for the respondent produced the following judgment ,

a) the Plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act 1963 (36 of 1963), and the suit has, in consequence, abated and

b) the plaintiff applies after the expiry of the period of specified therefore in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of Act on the ground that he had be reason of confirmation void. It is only an irregularity which would not invalidate the sale as void. (Puttayya Vs Varanashi Subraya Hebbar 1953 (2) MLJ 2009; ,AIR 1953 Mad 988. LL.R 1954 Md 43 67 LW 1116; 1953 MWN(468) cases.

c) A sale validity held cannot be held cannot be declared invalid by the mere fact that at the time of confirmation, the minor judgment debtors were not represented by a guardian a item .(Puttayya Vs Varanashi Subraya Hebbar 1953 (2) MLJ 2009; ,AIR 1953 Mad 988. LL.R 1954 Md 43 67 LW 1116; 1953 MWN(468) cases. Hence this court may be pleased to render order such as the suit is abated against D1.

3) Now the points for consideration is whether this intimation memo has to be allowed or not?

4) Heard both sides. Perused records. Intimation memo filed on 26.06.2019 by the 4th defendant stating that 1st defendant died on 08.05.2017. Objection filed by the plaintiff stating that intimation filed with 784 days delay. Hence as per order 22 Rule 4(3) this suit liable to be abated against D1. In this regard the learned counsel for the plaintiff submitted the authority which was reported in 1967 LW (38) 1116.

5) On perusal of records this suit has been filed by the plaintiff for seeking the relief of partition against the defendants in respect of the suit property admittedly the 1st defendant is the father of the plaintiff and other 2 to 5 defendant and plaintiff are the legal heirs of the 1st defendants and plaintiff are the legal heirs of the 1st defendant. Further the plaintiff categorically admitted in the plaintiff that the suit properties are ancestral properties and parties in the suit are co-paceners. Hence it is well settled law that dispute regarding partition all the parties and all the properties should be included for arriving proper and final adjudication. Further it is well settled law that mere technicalities should bot affect the merit of the case. Further the legal heirs of the 1st defendant including plaintiff were included in the suit proceedings. Hence they must be recorded as legal heirs of 1st defendant. Hence if this memo is considered there is no prejudice acquired to the plaintiff.

6) Further on perusal of records interim stay also granted by the Hon'ble High Court

of Madras at Madurai Bench on 11.12.2015 in CRP (MD) No. 2585/2015 as follows.0

(ii) The learned District Munsif – Cum-Judicial Magistrate Vadipatti is directed to consider the application in IA No. 379 of 2015 in IA No. 191 of 2015 in IA No. 18 of 2015 in OS No. 174 of 2009 and number the restoration application within a period of two weeks from the date of receipt of a copy of this order" Hence as per the direction, the above said IA 191 of 2015 disposal on 29.03.2019 and IA No. 18 of 2015 disposal on 18.06.2019. Death intimation memo was filed on 26.06.2019.

Further Order 22 Rule 4(5) of CPC stated that,

(5) Where -

(a) the plaintiff was ignorant of the death of a defendant, and could not for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963) and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefore in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under Section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act,

7) Further in Ponniyammal (vs) Ramalingam case reported in 2014 (1) LW 726 (Mad) the Hon'ble court of Madras held that,

Non - implement of legal heirs of deceased : It is clear that non - implement of legal heirs of the deceased first defendant is fatal to the case of the appellant. Lack of diligence or negligence can be attributed to the plaintiff only when he is aware of the death of the defendant and fails to take steps to bring the legal representatives on record. But in this case having filed the application with condonation of delay petition and when the same was dismissed. Knowing fully well about the impact of the same. The plaintiff has not choose to file the revision and get the legal heirs impleded in the appeal. No doubt implement of legal representative in a suit or appeal is for the limited purpose of adjudication of a case and not for the determination of proprietary rights. When the plaintiff had knowingly given up the right, automatically the appeal against the dead person is a nullity. Therefore, the appeal against a dead person is impermissible in law and as such, the judgment of the First

Appellate court decreeing the suit against the dead person under whom the appellant herein claims title cannot be allowed to stand and the same has to be set aside.

8) Further in Mahanth Sazyanand (vs) Shyam Lal Chuhan- case reported in 2018(3) LW 207 (SC) the Hon'ble court of Madras held that,

ORDER 22 RULE 5 - PROCEDURE LAW TO A ADVANCE JUSTICE :

It is indisputable that the procedural law are meant to advance justice. A procedure contemplated under the code which is mandatory in nature shall not skipped or ignored by the courts. Whereas in the instant case, the High Court's approach has diluted the purport of order 22 Rule 5 of CPC.

Further in Subramani (vs) Ramasamy - case reported in 2007 (2) CTC 29 (mad) the Hon'ble court of Madras held that,

ORDER 22 RULE 4 - PENDENCY OF APPEAL - LEGAL REPRESENTATIVE :

Since defendant died during pendency of appeal and legal representative not brought on record within stipulated time, hence they should be allowed to be brought on record and no injustice should be done.

Further in Kamal and others (vs) Rama Chandran and another - case reported in 2007 (1) MLJ 863 (mad) the Hon'ble court of Madras held that,

ORDER 22 RULE 9 - PARTITION SUIT - FINAL DECREE

It has been held that the estate of the deceased is represented by any one of the legal representatives then the appeal would not abate due to the failure for not bringing all the legal representatives of the deceased on record. -

Further it is well settled in law that in partition suit all the co-parceners are the proper and necessary parties for effective adjudication. Hence in view of the above such facts and circumstances and settled legal position the death intimation memo filed by the 4th defendant recorded and the plaintiff is directed to take necessary steps for implead the legal heirs of the 1st defendant as per law. No cost.

Dictated to the Steno Typist typed by her directly on the computer, corrected and pronounced by me in the open court this the 14th day of October 2019.

(Sd.D. Ramganesh)
District Munsif,
Vadipatti.

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