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CRP No. 2868 of 2026



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 29-05-2026

DELIVERED ON :12-06-2026

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

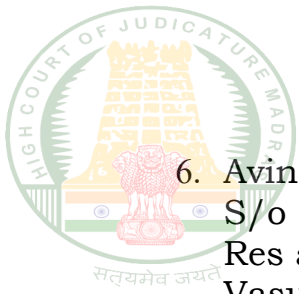
CRP No. 2868 of 2026

Jeyandran Daniel Moses
S/o Richard Moses,
No.1D, Ashreya 34,
fourth seaward Road,
Valmiki, Thiruvananthapuram,
Chennai 600011

..Petitioner

Vs

1. J.B.Malhotra
S/o T.Jaichand Malhotra
Res at No. Old NO.5, New No.13,
Vasu Street,
Kilpauk, chennai 600 010
2. Mahesh Kumar Malhotra
S/o T.Jaichand Malhotra
Res at No. Old NO.5, New No.13,
Vasu Street,
Kilpauk, chennai 600 010
3. Suresh Kumar Malhotra
S/o T.Jaichand Malhotra
Res at No. Old NO.5, New No.13,
Vasu Street, Kilpauk, chennai 600 010
4. Kanchan Malhotra
W/o Suresh Malhotra
Res at No. Old NO.5, New No.13,
Vasu Street,
Kilpauk, chennai 600 010
5. Hitesh Malhotra
S/o Suresh Malhotra
Res at No. Old NO.5, New No.13,
Vasu Street, Kilpauk, chennai 600 010



6. Avinash Malhotra
S/o Suresh Malhotra
Res at No. Old NO.5, New No.13,
Vasu Street,
Kilpauk, chennai 600 010

7. Shankar Mohan
S/o M K Pillai
No.121 GST Road,
Chengalpattu District

8. The Sub Registrar
Neelangarai,
Chennai

..Respondents

To set aside the IA.No.4 of 2025 in OS.No.1085 of 2024 order dated 13.03.2026 passed by District Munsif Cum Judicial Magistrate, Sholinganallur, Chennai

For Petitioner
:

Mr.S.Ganesan for
Colonel And Ganesan Associates

For Respondents
:

Mr.S.Rajasekar

ORDER

Though the matter has been listed for hearing the vacate stay petition, by consent, the main revision petition is taken up for hearing.

2. The second defendant is the civil revision petitioner. The contesting respondents are the plaintiffs.

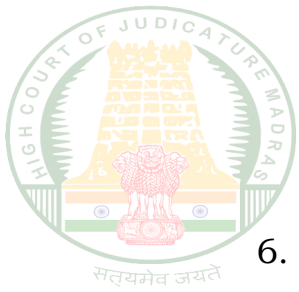
3. For the sake of convenience, the parties shall be referred to as per their ranks in the suit.

**Essential averments as per the plaint**

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4. The suit schedule mentioned property was purchased by the first plaintiff, J.B.Malhotra. He did so by way of a registered sale deed dated 22.10.1984. He settled specific portions of the property in favour of the plaintiffs 2 and 3. The total extent of the property was around 5 grounds. He settled two grounds on the western side in favour of the second plaintiff and two grounds on the eastern side in favour of the third plaintiff. The first plaintiff retained one ground in his name. The settlement deeds were duly registered in Document Nos.6915 and 6916 of 2013 dated 07.10.2013.

5. Post the registration of settlement deeds, when the plaintiffs applied for Encumbrance Certificate, it came to their knowledge that the first defendant had executed a sale deed in favour of the second defendant, for the suit schedule properties, on 26.08.2014. On verification, they came to know that the first defendant had created a document as if the first plaintiff had alienated the property in his favour in document No.1390 of 1986 dated 14.05.1986. The first plaintiff verified this document and he came to know that a fraud had been played by the first defendant. The plaint added, document No.1390 of 1986 was a document executed by one Selvi in favour of one Krishnan and that it was a mortgage deed for a different property.



6. The plaintiffs urged that the mortgage had nothing do with the suit schedule mentioned property and neither the plaintiffs nor the defendants were connected to the same. The plaintiffs urged that the first defendant, on the strength of this fabricated document, had alienated the property in favour of the second defendant and that both of them have attempted to trespass into the property. The plaintiffs lodged a complaint with the jurisdictional Police, who refused to take it on file. Hence, the plaintiffs approached this court in CrI. O.P.No.6971 of 2015. By an order dated 23.03.2015, this court directed the Police to enquire into the matter and register the complaint, if any cognizable offence is made out.

7. The plaintiffs further pleaded that the defendants are trying to alienate the property in favour of third parties. They feared that if such an event takes place, they will be put to irreparable loss and prejudice. Consequently, they filed O.S.No.350 of 2015, seeking the following reliefs:

“(a) for declaration, declaring that the alleged registered Sale Deed executed by the 1st Defendant in favour of the 2nd Defendant in Doc.No.5977 of 2014 dated 26.08.2014, registered on the file of 3rd Defendant as null and void and consequently direct the 3rd Defendant to make necessary corrections as



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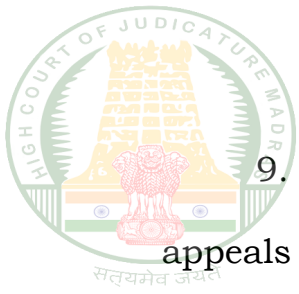
to delete the entries of the registration of the Sale Deed in Doc.No.5977 of 2014 dated 26.08.2014.

(b) for permanent injunction restraining the 1st and 2nd Defendant their men, agents, servants or anybody claiming through them from in any manner interfering with peaceful possession and enjoyment of the Plaintiffs over the suit schedule property;

(c) for permanent injunction restraining the 1st and 2nd Defendants their men, agents, servants or anybody claiming through them from in any manner alienating the suit schedule property to any third parties.

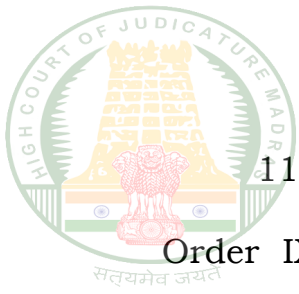
(d) for direction, directing the 1st and 2nd Defendants to pay the cost of the suit and pass such or other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

8. Initially, the suit was presented before the District Munsif Court at Alandur, which then had the jurisdiction over the property. Pending the suit, the plaintiffs took out an application seeking the relief of interim injunction restraining the defendants from interfering with their peaceful possession and enjoyment of their properties. The plaintiffs filed another application restraining the defendants from alienating the properties. By a common order dated 29.04.2016, the learned Additional District Munsif allowed these applications.



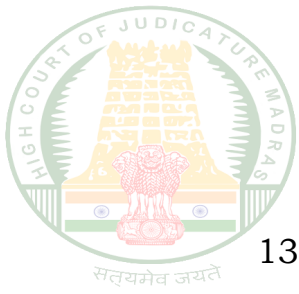
9. Aggrieved by the same, the second defendant preferred two appeals to the file of the learned Subordinate Judge at Alandur. These appeals were in CMA.No. 23 of 2021 and CMA.No.71 of 2021. By a common order dated 20.01.2025, the appeals came to be dismissed confirming the order of injunction granted by the learned Additional District Munsif on 29.04.2016. In the said common order, the learned Subordinate Judge at Alandur directed the learned District Munsif to complete the trial within a period of six months from the date of receipt of a copy of that order.

10. On account of bifurcation of territorial jurisdiction, the suit in O.S.No.350 of 2015 on the file of District Munsif Court, at Alandur stood transferred to the file of the newly created District Munsif cum Judicial Magistrate at Sholinganallur. Before the said court, it was renumbered as O.S.No.1085 of 2024. The Sholinganallur Court listed the suit for the first hearing on 14.02.2025. The counsel represented the plaintiffs on that date and filed a memo together with the copy of the order passed by the appellate court. Thereafter, the matter was adjourned to 12.03.2025. On that date, the court directed private notice to the parties. The case was adjourned to 04.04.2025. On 04.04.2025, as there was no representation on the side of the plaintiffs, the suit was dismissed for default.



11. In order to restore the suit, an application was filed under Order IX Rule 9 of the Code of Civil Procedure. The plea of the plaintiffs was that due to ill health, the first plaintiff was not in a position to give instructions to their counsel and hence, no representation was made on their behalf. It was also pleaded that the third plaintiff, Mr.Suresh Kumar Malhotra had passed away on 16.12.2022 and this intimation had not been given by him to his counsel. Pleading that non appearance is neither willful nor wanton, he sought restoration of the suit. Notice was ordered in this application.

12. The second defendant alone filed a detailed counter. According to him, the claim of ill health is vague and unsupported by evidence. He urged that failure of the plaintiffs to appear on the day indicates gross negligence and lack of due diligence. He urged that the dismissal for default had rightly been ordered by the Trial Court and the order does not warrant any interference. A plea was taken that as the third plaintiff had passed away on 16.12.2022 and since steps had not been taken in time, "*the suit is deemed to have abated qua the third respondent*" (sic) (plaintiff). He further urged that the surviving plaintiffs are playing fraud on the court and that their intention is not to assert the alleged title but to procrastinate the proceedings. Consequently, he sought dismissal of the petition.



13. The plaintiffs 1 and 2 had also filed three other applications in I.A.No.2 of 2025, I.A.No.3 of 2025, and I.A.No.5 of 2025. These applications were to condone the delay in filing an application to set aside the abatement caused due to the death of the third plaintiff, to set aside the abatement so caused and to bring on record the legal representatives of the deceased third plaintiff. The learned District Munsif cum Judicial Magistrate, Sholinganallur dismissed the applications in I.A.No.2 of 2025, I.A.No.3 of 2025 and I.A.No.5 of 2025 on 04.02.2026.

14. As the application in I.A.No.4 of 2025 was not disposed of and kept pending, the plaintiffs 1 and 2 moved a revision before this Court in CRP.No.1061 of 2026, seeking expeditious disposal of I.A.No.4 of 2026. This Court, by an order dated 26.02.2026, directed the learned District Munsif cum Judicial Magistrate, Sholinganallur to pass orders on the application on or before 13.03.2026 and ordered the revision.

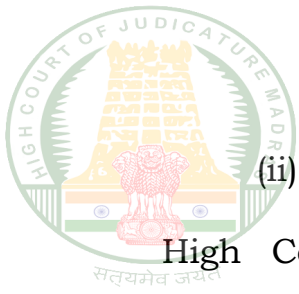
15. By an order dated 13.03.2026, the learned Trial Judge allowed the application under Order IX Rule 9 of the Code. Aggrieved by the same, the present revision has been filed.



16. This Court entertained the revision on 30.04.2026 and had granted interim stay of further proceedings of the restoration of the suit. The plaintiffs moved a vacate stay petition in CMP.No.13383 of 2026, urging that the second defendant is attempting to take forcible possession of the property using unauthorised means. The vacate stay petition was listed for hearing before this Court on 27.05.2026. On that date, it was represented that the learned counsel for the petitioner, Mr.S.Ganesan is not available and hence, the matter be heard on another day. On a due consideration of the request, the matter was adjourned to 29.05.2026. On that day, I heard Mr.S.Ganesan for the petitioner and Mr.S.Rajasekar for the contesting respondents in the main revision.

17. Mr.S.Ganesan urged that on account of the dismissal of the application to bring on record the legal representatives of the deceased third plaintiff, the entire suit abates and it cannot be restored only at the instance of the plaintiffs 1 and 2. He relies upon the following judgments:

(i) **Gurnam Singh (Dead) by Legal Representatives and Others v. Gurbachan Kaur (Dead) by Legal Representatives** in Civil Appeal No.5671 of 2017 dated 27.04.2017;



(ii) ***Raniya Bai v. Tekmani Rathore and others*** on the file of

High Court of Madhya Pradesh in S.A.No.1171 of 2014 dated

17.04.2023;

(iii) ***Hemareddi (Dead) through Legal Representatives v.***

Ramachandra Yallappa Hosmani and Others, (2019) 6 SCC 756;

(iv) ***Suresh Chandra (Deceased) through legal heirs and***

others v. Parasram and Others, 2025 SCC Online SC 1472 and

(v) ***Vikram Bhalchandra Ghongade v. The State of***

Maharashtra and Others, 2025 INSC 1283.

He urged that the revision be allowed and the order of the trial court be set aside.

18. Per *contra*, Mr.S.Rajasekar urged that the first plaintiff had lodged a police complaint on 24.10.2014, stating that the defendants are attempting to grab his property using forged documents. As no action had been taken, he had approached the High Court and obtained an order for registration of an FIR. An FIR was also registered in Crime No.207 of 2015 by the Central Crime Branch, Greater Chennai Police, invoking Sections 465, 467, 468, 471, 420 read with Section 120B of Indian Penal Code. He pointed out that the Civil Revision Petitioner is also an accused in the said FIR. After investigation, a final report had been filed before the Metropolitan Magistrate for trial of land grabbing cases Item II, Periamet on



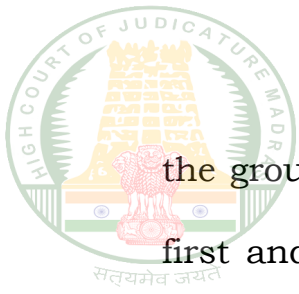
28.04.2023. In the meantime, as the plaintiffs faced dispossession, they came forth with the present suit.

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19. Mr.S.Rajasekar pointed out that he had the benefit of interim order till the suit had been dismissed for default by the learned Trial Judge. Thereafter, the second defendant presented a suit in O.S.No.82 of 2025, seeking the relief of permanent injunction and also challenging the settlement deeds executed by the first plaintiff in favour of the second plaintiff and the third plaintiff. He stated that he had completed pleadings by filing a detailed written statement on 25.02.2026 in the suit filed in O.S.No.82 of 2025 and an application for rejection of plaint is pending consideration before the said court. He pleaded that the parties have distinct and separate rights over the suit schedule mentioned property and therefore, dismissal of I.A.No.2 of 2025, I.A.No.3 of 2025 and I.A.No.5 of 2025 will not affect the right of the plaintiffs 1 and 2 to continue to prosecute the suit.

20. I have carefully considered the submissions and have gone through the records.

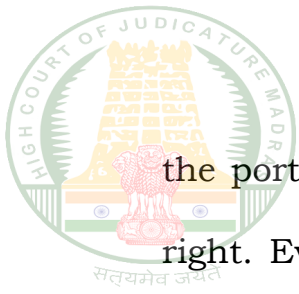
21. At the outset, I should point out that Mr.S.Ganesan did not raise a plea urging that the order of the learned Trial Judge finding sufficient cause to restore is erroneous. His entire argument was on



the ground that as the suit has abated against the third plaintiff, the first and second plaintiffs cannot continue with the suit. His plea is that the decree is a joint and indivisible decree, and the dismissal of the suit as abated *qua* the third plaintiff, would put an end to the entire suit. This requires me to go through the plaint for the purpose of seeing whether the plaintiffs had sought an independent right or had sought the right as joint owners.

22. A perusal of the plaint in O.S.No.1085 of 2024, particularly paragraph No.2, shows that distinct portions of the property had been settled by the first plaintiff in favour of the second and third plaintiffs. The plea of the plaintiffs is that the second plaintiff is the owner of the western portion of the suit schedule mentioned property to an extent of two grounds and the third plaintiff is the owner of the eastern portion of the property for the same extent and the first plaintiff is the owner of the property with respect to the remaining one ground. It is not the case of all the three plaintiffs claiming that they have ownership over every inch of the property as co-owners. The relief sought for in the suit is that the alleged sale deed executed by the first defendant in favour of the second defendant is null and void.

23. The second defendant claims the right only through the said deed. That deed, too, pertains to the entirety of the property, covering

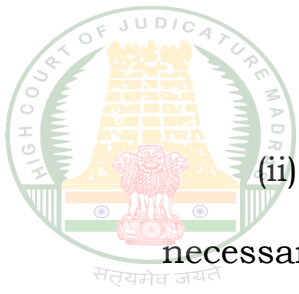


the portions over which each of the plaintiffs asserts an independent right. Even without the presence of the third plaintiff, the court can still come to a conclusion as to whether the sale projected by the second defendant is true and genuine. It is not a case of co-owners having instituted a suit claiming a right over the property, rather, it is a case where each of the plaintiffs, as pointed out earlier, claim separate shares.

24. If the interest of the plaintiffs are separate and defined, the failure to substitute the legal representatives of one deceased plaintiff results in abatement only with respect to his specific interest, and not as to the entire suit. This position has been settled by the judgment of the Supreme Court in ***Government of Andhra Pradesh v. Pratap Karan and Others, (2016) 2 SCC 82.***

25. I would also refer to the judgment of the Andhra Pradesh High Court in ***G.Krishnaji Rao and another v. Boya Karrennagari Ramaiah and others, (1989) 2 ALT 347.*** Justice M.N.Rao has pointed out that the Court, while considering whether the suit abates only against the deceased party or abates in its entirety, must take note of the following:-

- (i) whether the relief claimed in the suit is joint and indivisible;



(ii) whether the party could have brought the action for the necessary relief against those respondents alone who are still before the court; and

(iii) whether the decree against the surviving parties, if the appeal succeeds, would be ineffective, that is to say it could not be successfully executed.

Answering the questions, the learned Judge came to a conclusion that the abatement of the suit against one defendant would not lead to abatement of the suit in its entirety. After referring to the judgment of the Supreme Court in the ***State of Punjab v. Nathu Ram, AIR 1962 SC 89***, he held that only if the suit would result in a contradictory decree, it would abate in full.

26. I should point out that the Code of Civil Procedure itself contemplates a situation where the right to sue survives to the surviving plaintiffs. This is under Order XXII Rule 2 of the Code of Civil Procedure. The provision holds where the right to sue survives to the surviving plaintiffs alone, the court should cause an entry to that effect on its record and the suit should proceed at the instance of the surviving plaintiffs. In order to apply abatement, the right to sue should not survive to the surviving plaintiff or plaintiffs. This is clear from Order XXII Rule 3(1) of the Code of Civil Procedure.

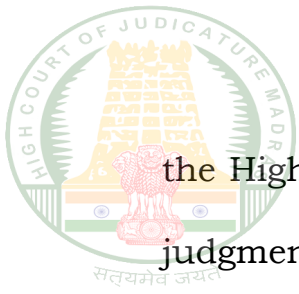


27. The relief sought for in the suit certainly survives with respect to the plaintiffs 1 and 2. The second defendant claims a right, through the sale deed, over the property of the surviving plaintiffs. Hence, plaintiffs 1 and 2 are entitled to present a claim before the court that the sale deed executed by the first defendant in favour of the second defendant, covering their property, should not be on the file.

28. Let me now turn to the authorities cited by Mr.S.Ganesan.

29. First, in **Gurnam Singh's** case, the issue before the Supreme Court was whether the judgment passed when one of the parties had already died constitutes a nullity or not. As this judgment did not deal with the issue of abatement, it is not helpful to Mr.S.Ganesan.

30. Next, in **Raniya Bai's** case, a Second Appeal was presented before the High Court of Madhya Pradesh against the judgment and decree passed by the learned District Judge at Anuppur. When the appeal was pending before the first appellate court, the second respondent had passed away. He passed away on 06.09.2014. The first appellate court delivered the judgment on 14.10.2014. The judgment in the appeal was pronounced without bringing on record the legal representatives of the deceased. The issue presented before



the High Court was whether the judgment was a nullity. Applying the judgment of the Supreme Court in **Gurnam Singh's** case, the Madhya Pradesh High Court came to a conclusion that since the decree had been passed when the second respondent was dead, it is a nullity and consequently, set aside the judgment. The issue of abatement never arose for consideration in this case. Hence, this judgment is not helpful to Mr.S.Ganesan.

31. Heavy reliance was placed by Mr.Ganesan on the judgment of the Supreme Court in **Hemareddi's** case. Let us analysis the facts of the case.

31(a) The suit property belonged to a Hindu Joint Family. The plaintiffs were two brothers. They filed a suit against their aunt, the second defendant and against the first defendant, who claimed to be the adopted son of the second defendant. They denied any right to the defendants over the suit property. The suit was dismissed by the trial court holding that the adoption was true and genuine.

31(b) Aggrieved by the said decree, both the brothers jointly preferred a regular appeal to the High Court. When the appeal was pending, one of the plaintiffs passed away. His legal heirs were not brought on record. The High Court of Karnataka took a view that as the appeal had abated against one appellant, nothing survived for



consideration at the instance of the other appellant. Consequently, it dismissed the appeal. Challenging the same, an appeal was moved before the Supreme Court.

31(c) After analysing the pleadings, the Supreme Court noted that both the brothers had brought a joint and indivisible claim regarding the joint family property. They noted that they shared an inseverable interest in declaring the adoption of the first defendant as void. Since the right to sue did not survive to one plaintiff alone, the Court concluded that the legal representatives of the deceased brother ought to have been brought on record. It pointed out that the decree of the trial court had become final with respect to the deceased brother and that in the eyes of law, the adoption was valid as far as his share is concerned. If the surviving plaintiff was allowed to continue and succeed, and if the High Court would have issued a decree stating that the adoption was invalid, this would lead to two contradictory and irreconcilable decrees against the same defendants concerning the same adoption. As law cannot tolerate such a situation where an individual is a legally adopted relative of one brother and not of the other, the appeal came to be dismissed.

31(d) The test that the Supreme Court directed is that the courts must ask whether can the court pass a decree without creating an

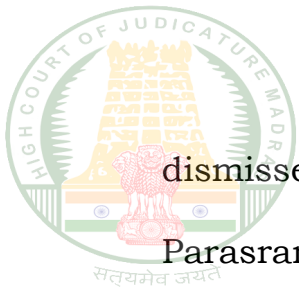


irreconcilable conflict with a decree that had already attained finality.

If it can, the matter can proceed. If it cannot, the entire matter must face abatement.

31(e) I have already pointed out that each of the brothers have claimed a separate and distinct shares. Each of the plaintiffs could have separately brought the suit stating that the document on which the second defendant relies upon is invalid. The right to sue survives on the surviving plaintiffs. It is not a case of a joint family property, but a case of three plaintiffs jointly filing a suit over their individual properties. Hence, the judgment in **Hemareddi's** case does not come to the rescue of Mr.S.Ganesan.

32. The next judgment relied upon by Mr.S.Ganesan is **Suresh Chandra's** case. The appeal arose out of the suit presented by Parasram seeking declaration of title, possession and mense profits of the residential house. The defendants, viz., Suresh Chandra and Ram Babu jointly resisted the suit, pleading that there was no tenancy as pleaded by the plaintiff. They claimed title over the property through their ancestor, one late Gokul Prasad. According to them, Gokul Prasad had derived exclusive interest in the suit property through a partition deed with his brothers in the year 1947. The trial court



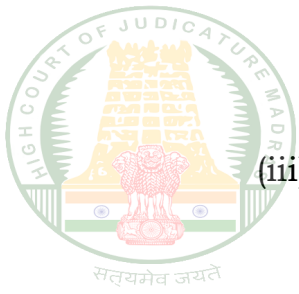
dismissed the suit against which an appeal was preferred by Parasram. The first appellate court decreed the suit.

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32(a) The legal heirs of Suresh Chandra together with Ram Babu preferred a second appeal. During the pendency of the second appeal, Ram Babu passed away on 19.08.2015. An intimation of his death was given to the court on 04.04.2016. Despite the same, steps had not been taken to bring Ram Babu's legal representatives on record. The High Court of Madhya Pradesh dismissed the appeal as abated on 21.02.2022. Thereafter, applications were filed to set aside the abatement and bring on record the legal representatives of the deceased Ram Babu. Both these applications were rejected by the High court on 04.08.2022. Challenging the orders of the High Court dated 21.02.2022 and 04.08.2022, appeals were preferred to the Supreme Court.

32(b) The Supreme Court caused a detailed analysis of the entire law on the point. It held that when the decree appealed is joint, inseverable and indivisible, partial abatement leads to total abatement. The court laid down three prong test to identify a joint and indivisible decree. They are:-

- (i) common defence;
- (ii) finality of decree; and

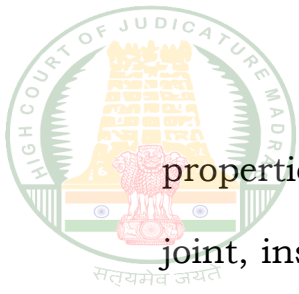


(iii) inconsistent decree.

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32(c) It pointed out that both the defendants claim a singular joint interest through their father. Secondly, upon abatement against Ram Babu, the first appellate court's decree declaring the plaintiff as the sole owner of the property and the defendant as a tenant has attained finality, and thirdly, if the remaining appellant was permitted to pursue the appeal, it would produce two conflicting and mutually destructing decrees for the same property. That is to say, one decree would be holding that the plaintiff is the rightful owner of the property, while the new decree, would be declaring the surviving defendant as the owner. Since the court cannot pass inconsistent decrees, it dismissed the appeal.

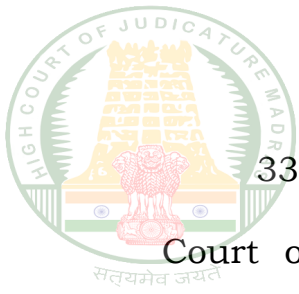
32(d) At this stage, I should point out that the court had also rejected the plea of Order XLI Rule 4 of the Code of Civil Procedure, pointing out that the said provision applies at the time of **institution** of the appeal. Whereas, during **pendency** of an appeal, Order XXII governs the issue. Once all the defendants chose to file an appeal jointly, the benefit of Order XLI Rule 4 is not available to them. The very narration of the facts shows that the factual situation which prevailed in **Suresh Chandra's** case is different from the situation prevailing in this case. The plea of the plaintiffs are over separate



properties and the decree they are seeking for cannot be treated as joint, inseverable and indivisible. Hence, the said judgment, too, is not applicable to the facts of the case.

33(a) The next case relied upon is **Vikram Bhalchandra Ghongade**'s case. The plaintiffs were the legal heirs of one Arjunrao Thakre. He was allotted property as he was an ex-serviceman. On his death, the property was reallocated by the Collector, Wardha in favour of the defendants 3 to 5. Consequently, the legal heirs of Arjunrao Thakre presented the suit for declaration that the allotment of land in favour of defendants 3 to 5 was illegal. The trial court decreed the suit. Aggrieved by the said decree, the defendants 4 and 5 preferred an appeal.

33(b) Even before the appeal can be heard, the fourth defendant died on 27.10.2006 and the fifth defendant died on 20.09.2010. The death of these defendants were not brought to the notice of the first appellate court. The first appellate court partly allowed the appeal on 20.10.2010. It modified the decree granted by the trial court holding that the plaintiffs were entitled only to a portion of the property allotted to Arjunrao Thakre.



33(c) The original plaintiffs preferred a second appeal to the High Court of Bombay. The appeal was originally disposed of by the Registrar (Judicial) as abated against the defendants 4 and 5. The plaintiffs sought restoration of the second appeal, pointing out that the defendants had died during the pendency of the first appeal and their legal heirs had not been brought on record and consequently, the judgment pronounced by the first appellate court was a nullity.

33(d) The High Court, by an order dated 03.12.2012, held that the second appeal could not have been dismissed as abated and restored the same. Thereafter, the original plaintiffs withdrew the second appeal urging that the first appeal preferred by the defendants 4 and 5 itself had abated and it was the trial court judgment was in operation. The second appeal was dismissed as withdrawn. Thereafter, the legal heir of the original plaintiffs presented an execution petition to execute the decree of the trial court. The learned Executing Judge held that the judgment of the appellate court cannot be treated as abated and rejected execution.

33(e) Aggrieved by the said order, the legal heir of the original plaintiffs approached the High Court in W.P.No.5791 of 2023. The High Court upheld the order of the executing court and dismissed the



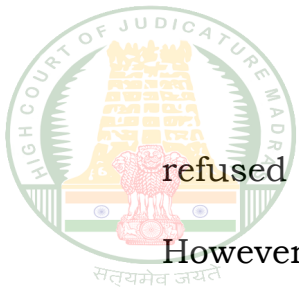
writ petition. Challenging the same, an SLP was preferred to the Supreme Court.

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33(f) The Supreme Court held that where a party expires before orders are reserved in the appeal, the judgment in favour of the deceased appellant is a nullity and consequently, it would only be the decree of the trial court which would govern the rights of the parties. This case, like the situation in **Raniya Bai's** case and **Gurnam Singh's** case, dealt with the situation of decree of a court, in favour or against, a dead person and not a situation of abatement. Consequently, it does not assist Mr.S.Ganesan's plea.

34. The learned Trial Judge has taken into consideration that the reason given by the first and second plaintiffs that they could not attend the court due to ill health as acceptable, especially when there is no delay in filing the petition. He has further held the suit had abated against the third plaintiff alone. The view taken by the learned Trial Judge is unimpeachable. The plaintiffs have presented a bonafide and reasonable explanation for their absence.

35. As pointed out by the Full Bench of the Bombay High Court in **P.D.Shamdasani and others v. The Central Bank of India, AIR 1938 BOM 199**, an application for restoration of the suit should be

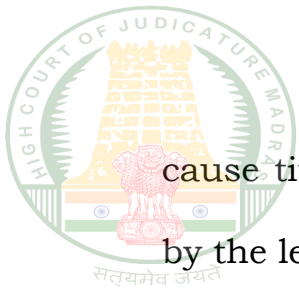


refused only if there is a gross negligence or gross carelessness.

However, if a person whose suit had been dismissed subsequently appears and produces an excuse for his absence which is not unreasonable, the court ought to have exercise its discretion in his favour. I respectfully adopt the reasoning of the Bombay High Court to the present case.

36. Furthermore, the parties had contested the proceedings as late as 20.01.2025 before the appellate court. It was only on account of bifurcation of jurisdiction that the suit came to the file of the newly create court at Sholinganallur, and that too, the plaintiffs were absent only for one day. To saddle them with the drastic consequence of dismissal of the suit itself when they had been contesting the suit from 2015, would be an extremely harsh step. As vital rights over an immovable property is involved and as allegation of land grabbing are present, I am inclined to uphold the view of the learned Trial Judge restoring the suit.

37. Furthermore, a perusal of the impugned order shows that the learned Trial Judge had not restored the suit against the third plaintiff. In paragraph No.6.4 of the impugned order, he has exercised the power under Order XXII Rule 2 of the Code of Civil Procedure and has suo motu deleted the legal heirs of the third plaintiff from the



cause title. Consequently, I do not find any error in the order passed by the learned Trial Judge.

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38. Furthermore, the second defendant himself has raised similar issues before the court in O.S.No.82 of 2025, which is pending on the file of the very same court.

39. In view of the above, the learned Trial Judge is requested to dispose of the application for rejection of plaint in O.S.No.82 of 2025 within a period of eight weeks from the date of receipt of a copy of this order. In the event, the rejection of plaint is decided in favour of the plaintiff therein, he shall club O.S.No.1085 of 2024 along with O.S.No.82 of 2025 and dispose of the same by a common judgment.

40. With the above observations, the civil revision petition stands dismissed with costs. Costs memo to be filed within a week from today.

12-06-2026

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Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No



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To

1. The District Munsif Cum Judicial
Magistrate, Sholinganallur, Chennai

2. The Sub Registrar
Neelangarai,
Chennai

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V.LAKSHMINARAYANAN J.

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