

d

SLP(C)No. 12156 OF 2003
ITEM No.43

Court No. 5

SECTION XII
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.12156/2003

(From the judgement and order dated 29/10/2002 in AS 1354/89
of The HIGH COURT OF MADRAS)

P. JESAYA (D) BY LRS.

Petitioner (s)

VERSUS

SUB COLLECTOR & ANR.
(With Appln(s). for substitution)(With Office Report)

Respondent (s)

Date : 17/01/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA

HON'BLE MR. JUSTICE H.K. SEMA

For Petitioner (s)Mr. V. Prabhakar, adv.
Mr. R.S. Krishna Kumar, Adv.
Mr. M.K.D. Namboodiri,Adv.

For Respondent (s)Mr. R. Ayyam Perumal,Adv.
Mr. Subramonium Prasad.,Adv.
Mr. Abhay Kumar, Adv.
Mr. R. Gopala Krishnan, Adv.
Mr. V. Senthil Kumar, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.
The Appeal stands dismissed in terms of the signed order.
There will be no order as to costs.

(K.K.Chawla)
Court Master

(Gyan Bhatia)
Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2005
[ARISING OUT OF SLP(CIVIL) NO.12156 OF 2003]

P. JESAYA (D) BY LRS.

Appellant (s)

VERSUS

O R D E R

Leave granted.

Heard parties at great length.

The only contention taken up in this Appeal is that the 1st Respondent, in the Appeal before the High Court, had died during the pendency of that Appeal. It is contended that his heirs were not brought on record and, therefore, the Appeal before the High Court had abated. In support of this contention reliance is placed under Order 23 Rule 4 of the Code of Civil Procedure as well as the Judgments of this Court in the case of Mithailal Dalsangar Singh v. Annabai Devram Kini reported in (2003) 10 SCC 691 and in the case of Amba Bai v. Gopal reported in (2001) 5 SCC 570. It is submitted that as the Appeal had abated, the Judgment delivered by the High Court is non est and cannot be enforced.

Though the arguments are attractive one must also keep in mind Order 22 Rule 10 of the Code of Civil Procedure. It is obligatory on the Pleader of a deceased to inform the Court and the other side about the factum of death of a party. In this case we find that no intimation was given to the Court or to the other side that the 1st Respondent had died. On the contrary a counsel appeared on behalf of the deceased person and argued the matter. It is clear that the attempt was to see whether a favourable order could be obtained. It is clear that the intention was that if the order went against them, then thereafter this would be made a ground for having that order set aside. This is in effect an attempt to take not just the other side but also the Court for a ride. These sort of tactics must not be permitted to prevail. We, therefore, see no reason to interfere. The Appeal stands dismissed. There will be no order as to costs.

.....J.
(S.N. Variava)

.....J.
(H.K. Sema)
New Delhi;
January 17, 2005.