

Anil Kumar Vs. Durga Prasad

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SooperKanoon Citation : sooperkanoon.com/1048058

Court : Madhya Pradesh

Decided On : Jul-30-2012

Appellant : Anil Kumar

Respondent : Durga Prasad

Advocate for Pet/Ap. : Shri. Sandeep Jaiswal

Judgement :

FA No.9/10.

30.7.2012 Shri Sandeep Jaiswal, learned counsel for the appellant.

None for the respondents no.1, 2, 3, 7 and 9.

Respondents no.4 is dead.

Respondents no.5, 6, & 8 are still unserved.

Appellants counsel submits that today he has filed I.A.No.8681/12 for dispensing with the service of the notice on respondents no.2 & 6 and I.A.No.8682/12, for deleting the name of respondents no.4 from the array of appeal memo on account of his death stating that he was proceeded exparte before the trial Court and, therefore, to bring his legal representatives on record is not necessary.

Heard on I.A.No.8681/12, respondent no.2 has already been served and, therefore, the order for dispensing with the service of the notice against such

respondents is not required in the matter.

The respondent no.6 was co-defendant in the trial Court with the appellant/defendant and he has not filed any appeal against the impugned judgment and this appeal could be adjudicated effectively only in presence of the appellants and respondents no.1 to 3, the plaintiffs, therefore, on such ground and also considering that the respondent no.6 was ex-parte before the trial Court, the notice against such respondent is hereby dispensed with.

Besides this, in view of the aforesaid same reason, the service of the notice against the respondent no.5 and 8, who were co-defendants with the appellant in the trial Court, are also dispensed with.

Accordingly I.A is allowed in part.

Also heard on I.A.No.8682/12, this is an application under Order 22 Rule 4(4) of CPC for deleting the name of respondent no.4 from the array of appeal memo.

In view of the aforesaid provision, taking into consideration the position that the respondent no.4 was exparte before the trial Court, and also considering the circumstances that this appeal could be decided effectively only in presence of appellant and the respondents no.1 to 3, the plaintiffs as stated above, the presence of legal representatives of deceased-respondent no.4, is not required hence by allowing the I.A., the appellant is permitted to delete the name of respondent no.4 from the array of appeal memo.

In view of the aforesaid, no order is required on the question of default as the same has been answered.

It being an admitted appeal, Office is directed to list the same for final hearing in due course.

(U.C.Maheshwari) Judge Pb

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