

Mohamed Ibrahim and Others Vs. Chellammal

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Court : Chennai

Decided On : Jan-23-1991

Reported in : AIR1991Mad309; (1991)IMLJ334

Judge : Srinivasan, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 22, Rule 4;

Appeal No. : C.R.P. No. 2848 of 1990

Appellant : Mohamed Ibrahim and Others

Respondent : Chellammal

Advocate for Def. : M. Rathinam, Adv.

Advocate for Pet/Ap. : T. Mahaboob Sheriff, Adv.

Judgement :

ORDER

1. No doubt the contention of learned Counsel for the petitioner is correct in law, as the appeal filed by the respondent herein before the Subordinate Judge was a stillborn one as the defendant in the suit was dead by the time the appeal was filed. In such cases, Order XXII, C.P.C. will not apply. There is no question of bringing on record their legal representatives as there was no valid appeal. The remedy of the appellant is to get the cause title amended, if it is within time to file

the appeal against the legal representatives. If it is out of time, the remedy is to apply for condonation or delay in filing the appeal against the legal representatives.

2. In this case, an application to bring on record the legal representatives was filed by the respondents herein, as if the defendant was alive at the time of filing of the appeal. The Court below has accepted the explanation given by the respondent that she was not in town at the time of filing the appeal. According to her, she had provided her advocate with necessary funds for preferring the appeal even a few days prior to the date of filing the appeal and left the place. It is her evidence that she came to know the death of the defendant only after her return to the place and immediately thereafter she filed the petition to bring the legal representatives on record. It is seen that the learned Subordinate Judge has recorded evidence on both sides in the application. But, the list of witnesses is not appended at the bottom of the judgment.

3. This Court had on prior occasions pointed out that Rule 84 of the Civil Rules of Practice should be strictly followed and adhered to by the subordinate judiciary. Unfortunately, this has not been done in the present case also. Under rule 84 of the Civil Rules of Practice, the judgment of the Court shall be headed and drawn up in the manner as a decree and shall also state the dates on which the case was heard as in Form No. 24 and a list of exhibits filed and witnesses examined shall be annexed thereto. The language of the rule is mandatory. The Subordinate Courts are bound to annex a list of witnesses and a list of exhibits to the judgment.

4. Though the contention put forward by the petitioners is correct in law, I am of the view that interests of justice require that an opportunity should be given to the respondent to prosecute the appeal as against the legal representatives of the deceased defendant after condoning the delay. It is possible to allow this revision petition and direct the respondent to file a fresh appeal with an application for condonation of delay. That would only mean further proceedings and further delay. In order to avoid multiplicity of proceedings and in the interests of justice, I am of the view that the procedure can be suitably modified and the appropriate orders can be made in this revision petition itself.

5. For the purpose of condonation of delay in filing the appeal before the Subordinate Judge, the respondent should be put on terms. Hence, the respondent is directed to pay a sum of Rs. 300/- (Rs. three hundred only) by way of costs to the petitioners' counsel appearing in this Court on or before 14-2-1991. If the amount is not paid, the appeal filed by the respondent herein before the Subordinate Judge will be dismissed.

6. Post the civil revision petition on 15-2-1991.

7. Order accordingly.

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