

R. Sentil Kumar Vs. Vilvanatha Mudaliar (Died)lr.S and Others

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Court : Chennai

Decided On : Nov-07-2012

Reported in : 2013(1)LW68; 2013(1)CTC335

Judge : R.S. Ramanathan

Appeal No. : C.R.P.(PD)Nos. 857 to 861 of 2012 & M.P.No.1 of 2012

Appellant : R. Sentil Kumar

Respondent : Vilvanatha Mudaliar (Died)lr.S and Others

Advocate for Pet/Ap. : For the Petitioner: P.N. Balaji, Advocate. For the Respondents: R6 to R8, R11 & R13, V. Balaji, R10, S. Partheeban, Advocates.

Judgement :

(Civil Revision Petition against the orders dated 23.3.2011 in I.A.Nos.383, 381, 382, 384 of 2010 and 523 of 2005 respectively in O.S.No.284 of 1997 on the file of the District Munsif, Arakkonam.)

COMMON ORDER:

Plaintiff is the revision petitioner.

2. The plaintiff filed the suit for declaration and injunction against four persons. The first defendant Vilvanatha Mudaliar died and therefore, the petitioner/plaintiff filed I.A.No.523 of 2005 under Order XXII Rule 4 of the Code of Civil Procedure to bring

on record the legal representatives of Vilvanatha Mudaliar, who were arrayed as respondents 5 to 13 in the petition, as defendants 5 to 13 in the suit. The petitioner also filed I.A.No.381 of 2010 to condone the delay of 1622 days in filing the application to bring on record the legal representatives of the deceased first defendant and filed I.A.No.382 of 2010 to set aside the abatement caused by the death of the first defendant. He also filed I.A.Nos.383 and 384 of 2010 for the same relief and all those applications were dismissed and aggrieved by the same, these revisions are filed.

3. Learned counsel for the revision petitioner submitted that immediately on coming to know about the death of the first defendant, the petitioner filed I.A.No.523 of 2005 to bring on record the legal representatives of the deceased first defendant and at that time, he was not aware of the date of death of Vilvanatha Mudaliar and the other contesting defendants also did not furnish the date of death of the first defendant and I.A.No.523 of 2005 was adjourned and during that period, he came to know about the date of death of Vilvanatha Mudaliar and therefore, filed these applications viz., I.A.Nos.381 to 384 of 2010 to condone the delay in filing the application to bring on record and to set aside the abatement and he has also stated the reason for the delay that only on 4.6.2010, he was informed by the counsel for defendants 2 to 4 that Vilvanatha Mudaliar died on 6.7.2000 and therefore, the delay was calculated from the date of filing of I.A.No.523 of 2005 and without appreciating the same, the court below dismissed those applications. He, therefore, submitted that the applications are to be allowed.

4. Learned counsel for the 10th respondent submitted that the application filed by the petitioner to set aside the abatement was rejected by the court below and that is an appealable order under Order XLIII Rule 1(k) and therefore, the revision is not maintainable. He further submitted that no request was made by the petitioner to the defendants to furnish the date of death of the first defendant and only after a request is made, the defendants are bound to give the particulars of the date of death and the particulars of the legal representatives and having failed to apply for the particulars regarding the date of death, it is not open to the revision petitioner to blame the defendants for not furnishing the date of death. He, therefore,

submitted that no sufficient reason has been stated to condone the delay in filing the application to set aside the abatement and to bring on record the legal representatives and considering all these aspects, the court below rightly dismissed those applications. He also relied upon the judgment of the Honourable Supreme Court in UNION OF INDIA v. RAM CHARAN (AIR 1964 SC 215) = ((1964) 3 SCR 467) and KATARI SURYANARAYANA v. KOPPISETTI SUBBA RAO ((2009) 11 SCC 183).

5. According to me, the court below, without properly appreciating the affidavit filed by the petitioner, erred in dismissing those applications and the court below erred in holding that in the absence of any steps taken by the petitioner in ascertaining the date of death of the deceased first defendant, he cannot blame the defendants. Admittedly, on coming to know of the death of the first defendant, the petitioner filed I.A.No.523 of 2005 to bring on record the legal representatives of the deceased first defendant. No doubt, as per the provisions of Limitation Act, the legal representatives are to be brought in within a period of ninety days from the date of death of the deceased and the date of knowledge cannot be taken into consideration. Nevertheless, section 5 of the Limitation Act is applicable to set aside the abatement and to bring on record the legal representatives of the deceased and we will have to see whether proper reasons have been stated for not filing the application to bring on record the legal representatives and to set aside the abatement within the stipulated time.

6. It is the specific case of the petitioner that the date of death was not intimated to the petitioner by the contesting defendants, despite the efforts taken by him and only on 4.6.2010, he was informed about the date of death and thereafter, he filed the applications in I.A.Nos.381 to 384 of 2010. The only contention of the learned counsel for the 10th respondent is that the defendants were not asked by the petitioner to inform the date of death of the first defendant. Admittedly, the contesting respondent is one of the proposed legal representatives and defendants 2 to 4 did not oppose the application filed by the plaintiff/petitioner. It is also not the case of the tenth respondent who is contesting the revision that the date of death was informed to the petitioner and despite the same, he did not file the application to set aside the abatement and to condone the delay in filing the

application to set aside the abatement. Therefore, whenever a party died during the pendency of the proceedings and the intimation is also conveyed to the plaintiff, a duty is cast upon the the other defendants to inform about the date of death also to enable the plaintiff to take further steps. Without informing the date of death of the first defendant, the other defendants only informed about the death of the first defendant and therefore, they cannot be permitted to take advantage of their lapses. Further, the legal representatives, who were also served, did not inform immediately about the date of death of the first defendant and on 7.4.2010, the petitioner filed a memo before the court below informing that the date of death was not informed and requested the court to direct the defendants to inform the date of death and only thereafter, the date of death was informed to the petitioner on 4.6.2010. Considering all these aspects, I am of the opinion that the plaintiff/petitioner has sufficiently explained the delay in filing those applications. Further, I.A.No.523 of 2005 was filed immediately on coming to know of the death of the first defendant and after coming to know the date of death of the first defendant, the other applications were filed to condone the delay and set aside the abatement.

7. In the judgment reported in (2009) 11 SCC 183, it has been observed by the Honourable Supreme Court that the court would take a more liberal attitude in the matter of condonation of delay in filing such application and also held that there are exceptions to the said rule and in that reported case, the parties were neighbours and they were having dispute with regard to use of a lane which lie between their houses and in that context, the Honourable Supreme Court, relying upon the judgment reported in AIR 1964 SC 215, dismissed the application to condone the delay. In the judgment reported in AIR 1964 SC 215, the application to bring on record was filed belatedly and no reason has been stated for not filing the application in time and the only reason sated was that the appellant was ignorant of the death of the respondent. Therefore, having regard to the facts of that particular case and having regard to the contention of the appellant that limitation starts from the date of of knowledge and not from the date of death, the Honourable Supreme Court refused to set aside the abatement.

But, here, the facts are different and as stated supra, I.A.No.523 of 2005 was filed immediately after coming to know of the death of the first defendant and after knowing the exact date of death, the other applications were filed and therefore, sufficient reasons have been stated by the petitioner in filing the applications belatedly.

8. No doubt, under Order XLIII Rule 1(k), any order refusing to set aside the abatement is appealable. Nevertheless, it is only a consequential order and by reason of the dismissal of the application to condone the delay in filing the application to set aside the abatement, the application to set aside the abatement was dismissed. Any order dismissing the application to condone the delay is revisable and therefore, these revisions are maintainable. Considering all these aspects, I am of the view that the court below has erroneously dismissed the applications and therefore, the orders are liable to be set aside and accordingly, they are set aside. The revisions are allowed. No costs. The connected miscellaneous petition is closed.

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