
(1994) 11 MAD CK 0039
In the Madras High Court

Kumara Pillai and Others

APPELLANT

Vs

Somasekaran Nair and Others

RESPONDENT

Date of Decision : 14-11-1994

Acts Referred:

Citation : (1994) 2 LW 665 : (1995) 1 MLJ 180

Hon'ble Judges : Govardhan, J

Bench : Division Bench

Judgement

Govardhan, J.—The fifth respondent in the civil miscellaneous appeal one Gopala Pillai died on 2.1.1986 during the pendency of this civil

miscellaneous appeal . The appellants have filed these petitions through the first appellant contending that the first respondent got the information of

the death of Gopala Pillai only 12.7.1993 from their Advocate at Madras on being informed by the advocate for the respondent and therefore,

after making enquiry they are filing these petitions. The petition in C.M.P. No. 1679 of 1993 is for excusing the delay of 2996 days in seeking to

set aside the abatement caused by the death of the fifth respondent. C.M.P. No. 11680 of 1993 is a petition to set aside the abatement caused by

the death of the fifth respondent. C.M.P. No. 11681 of 1993 is a petition to bring the respondents 93 to 98 as legal representatives of the

deceased fifth respondent. C.M.P. No. 11682 of 1993 is a petition for appointing the 95th respondent as the guardian of the minor respondents.

In the common-affidavit of the first appellant, he has stated that one of the legal representatives of the deceased is already on record as the fourth

respondent and there is no abatement of the appeal for taking steps to implead the legal representatives within 90 days and by way of abundant

caution, he is filing these petitions with a petition to excuse the delay on account of the fact that he was not aware of the death of the fifth

respondent earlier.

2. The third respondent filed a counter stating briefly as follows: Gopala Pillai died 10 years ago on 8.3.1982. He is a close relation of the

appellants. Appellants were present during his funeral. They are also neighbours in premises No. 3/28 and 3/31. The reason given by the

petitioners for the inordinate delay is not tenable and there is no bona fides in these petitions and therefore the petitions should be dismissed.

3. The civil miscellaneous appeal is against the order passed by the Sub Judge, Padmanabhapuram in A.S. No. 198 of 1970 by which, the learned

Subordinate Judge has remanded the suit to the trial court for fresh disposal according to law in the light of the directions given in his judgment.

4. Aggrieved over the order of demand, the 8th defendant in the suit has preferred this civil Miscellaneous appeal since the suit has been dismissed

by the trial court at the original instance.

5. Gopala Pillai, deceased fifth respondent in the appeal was the 6th plaintiff in the suit. The fourth respondent in this civil miscellaneous appeal is

his wife. The learned Counsel appearing for the petitioners would argue that since one of the legal heirs of the deceased respondent is already on

record, there is no abatement of the appeal against the said fifth respondent on account of the failure of the appellants to take steps to bring the

other legal representatives of the deceased and these petitions were filed only by way of abundant caution. The learned Counsel appearing for the

respondent would on the other hand argue that the reason given by the petitioners for the delay is not acceptable in view of the relationship

between the appellants and the deceased and that after the passing of the Hindu Succession Act, grandchildren of the deceased cannot be the legal

representatives and since the wife of the deceased is already on record as the fourth respondent, the petitions, could be dismissed and the civil

miscellaneous appeal could be heard with the existing parties since a finality has to be reached in the suit of the year 1967. It has been held in the

decision reported in Mahabir Prasad Vs. Jage Ram and Others, as follows:

Where in a proceeding a party dies and one of the legal representatives is already on the record in another capacity, it is only necessary that he

should be described by an appropriate application made in that behalf that he is also on the record as an heir and legal representative. Even if there

are other heirs and legal representatives and no application for impleading them is made within the period of limitation prescribed by the Limitation

Act the proceeding will not abate.

The above Ruling of the Apex Court is applicable to the facts of this case. The fifth respondent in this appeal died. From the petitions filed, it is

seen that there are other heirs and legal representatives and the wife of the deceased is already on record as one of the respondents in her

individual capacity as the fourth respondent. Therefore, the civil miscellaneous appeal could not be stated to have abated on account of the failure

of the petitioners to bring on record the other legal representatives of the deceased. In that view, I am of opinion that there is no necessity to pass

any orders on these four petitions except stating that they are not necessary and liable to be dismissed and it is enough for the appellants to file an

appropriate petition as observed in the judgment of the Supreme Court to the effect that the fourth respondent who is already on record in her

individual capacity may be recorded as heir and legal representative of the deceased fifth respondent. In that view, all the petitions are liable to be

dismissed.

6. In the result, C.M.P. Nos. 11679, 11680, 11681 and 11682 of 1993 are dismissed. The petitioners are directed to file an application to record

the fourth respondent who is already on record as the heir and legal representative of the fifth respondent, in the appeal. No costs.