

(1928) 03 MAD CK 0052
In the Madras High Court

Polapragada Sreeramulu

APPELLANT

Vs

Polapragada Naghabhushanam and Another

RESPONDENT

Date of Decision : 14-03-1928

Acts Referred:

Citation : AIR 1928 Mad 963 : (1928) 28 LW 496

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—Plaintiff is the petitioner in these two connected petitions In C.R.P. 660 of 1926 he applies for revising the order of the District Munsif declining to appoint a commissioner in pursuance of the preliminary decree In C.R.P. 661 of 1926 he applies for revising the order of the District Munsif refusing to restore the suit to file which had been dismissed for want of prosecution. The plaintiff brought a suit for partition and a preliminary decree was passed on 16th February 1921. The Court fixed 24th February 1921 for the plaintiff to apply for the appointment of commissioner. But on that day the plaintiff did not turn up and so the Court adjourned the suit to 4th March 1921. On that day also there was no appearance for the plaintiff and therefore the suit was dismissed. The application for restoration of the suit to file was made on 7th August 1925. The District Munsif rightly dismissed the application as being out of time and the application for passing a final decree was also dismissed on the ground that the Court had no jurisdiction to pass a final decree in the suit which was not on its file. The contention of Mr. Raghava Rao is that the order of the District Munsif dismissing the suit pending the passing of a final decree was without jurisdiction and therefore he is entitled to ignore the order. In other words, the order is of no effect and the Court is not bound to consider it as an order passed by the Court. He relies upon a case in Lachmi Narain Marwari v. Balmukund Marwari AIR 1924 P.C. 198 in which their Lordships of the Privy Council held that a Court had no jurisdiction to dismiss the suit after passing a preliminary decree but that it should adjourn the suit sine die with liberty to the plaintiff to restore the suit to the list on the payment of all costs and Court-fees, (if any) thrown away.

2. In this case the proper course would have been for the petitioner to have applied to have the order of the District Munsif revised by this High Court. That step he did not choose to take. Four years after he applied to Court to restore the suit to file. If the contention of the petitioner is upheld, it would amount to this that after the suit is dismissed, though improperly, the party to the suit might come up and say that that order, having been passed without jurisdiction, is no order at all, and that he is entitled to ignore it. When a Court dismisses a suit improperly, the suit is taken off the file and unless the suit is again brought to file, the Court becomes functus officio and so far as that suit is concerned cannot pass an order. The case in *Lachmi Narain Marwari v. Balmukund Marwari* AIR 1924 P.C. 198 does not go the length of enabling a Court to ignore the order passed in a suit by which it directed that the suit be taken off the file. When a Court dismisses a suit, the suit ceases to be on its file. In this case the order of the lower Court refusing to order the appointment of a commissioner in pursuance of a preliminary decree is a proper order inasmuch as there was no suit on its file in which it could pass a final decree. As the respondents were not represented in this Court, we asked Mr. K. Ramachandra: Ayyar to appear as *amicus curiae* and we thank him for the help that he rendered. Both the Civil Revision Petitions fail and they are dismissed.