



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Thursday, the Sixth day of January

Two Thousand and Twenty Two

PRESENT

The Hon'ble Mr. Justice R. VIJAYAKUMAR

C.M.P. (MD) .Nos.1736 of 2016 and 8448 of 2017

IN

S.A..No.1389 of 1998

C.M.P. (MD) .Nos.1736 of 2016:

A.Devaraj

Petitioner

Vs

1.Indirani

2.Alagarsamy

Respondents

Petition filed under Section 5 of the Limitation Act to condone the delay of 1127 days in filing the restoration petition to restore the S.A.No.1389 of 1998.

C.M.P. (MD) .Nos.8448 of 2017:

A.Devaraj

Petitioner

Vs.

1.Indirani

1st Respondent/1st Respondent

2.Alagarsamy (died)

3.Vana Roja

4.Koppammal

5.Chennammal

6.Nalini Devi

7.Malar Vizhi

3to7Respondents/

Proposed Respondents 3to7

Petition filed under order 22 Rule 4 of C.P.C., to bring on respondents 3 to 7 as the Legal Representatives of the deceased 2nd Respondent on record as the respondents 3 to 7 in S.A.No.1389 of 1998.

Prayer S.A.1398 of 1998:

Second Appeal file under section 100 of CPC., against the Judgment and Decree dated 09/01/1997 passed in A.S.No.178 of 1995 by the Principal District Court, Kamarajar District at Srivilliputhur confirming the Judgment and Decree dated 10/03/1995 passed in O.S.No.319 of 1994 by the District Munsif Court, Sattur.



ORDER:- This Petition coming on for hearing on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr. Ananth C. Rajesh, Advocate for the Petitioner and this court made the following order;

The above second appeal was dismissed for default on 03.12.2012. C.M.P(MD)No.1736 of 2016 was filed to condone the delay of 1127 days in filing an application to restore the second appeal in the said application. Notice was ordered on 21.03.2016.

2. With regard to the second respondent, the appellant had filed C.M.P(MD)No.8448 of 2017 to implead the legal heirs. Notice was ordered in the said application on 25.10.2017. As per the endorsement, the first respondent alone was served. Second and third respondents had died and R4 to R7 were not served due to incorrect address. The matter has been adjourned on several occasions to complete the service in C.M.P(MD)No.8448 of 2017 right from the year 2017 onwards. In fact, the second appeal itself has been dismissed as against the second respondent on 27.11.2012. No steps have been taken to restore the second appeal as against the second respondent who had subsequently died. Since several adjournments have been granted to the appellant to take steps to implead the legal heirs of the deceased parties and to restore the appeal as against the R2, no steps have been taken for the past 5 years. Today, the matter is listed under the caption "For Dismissal".

3. In view of the default in taking steps, even today, the learned counsel for the appellant simply seeks time to take steps. I do not find any reason to grant further time to the appellant. Hence, C.M.P(MD)No.1736 of 2016 which has been filed to restore the second appeal is dismissed for default. Consequently, other C.M.Ps are also dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

TO

1. The Principal District Judge,
Kamarajar District at Srivilliputhur.

2. The District Munsif, Sattur.



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ORDER DATED : 06/01/2022

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ORDER

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**C.M.P. (MD) .Nos.1736 of 2016
and 8448 of 2017**

IN

S.A..No.1389 of 1998

Giving direction and etc.
as stated within.

KB (25.01.2022) 3P 3C