



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Monday, the Thirteenth day of November Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice K.KALYANASUNDARAM

CMP(MD)Nos.10155 to 10164 of 2017

IN

SA No.1462 of 1997

1 AMEER JOHN (DIED)

2 ANWAR (DIED)

3 BATCHA (DIED)

4 JAFFAR

... 4th PETITIONER / 4th APPELLANT
IN ALL THE PETITIONS

5 BIBI JOHN

6 KADAR BIBI

7 FARITHA BANU

... PETITIONERS 5 to 7/ PROPOSED
APPELLANTS Nos.5 to 7 IN ALL THE PETITIONS

8 SUBEDHA DHARENE

9 SURIYA BEHAM

10 MOHAMMED BABU

... PETITIONERS Nos. 8 to 10/ PROPOSED
APPELLANTS 8 to 10 IN CMP(MD)No.15158 to 10161/17

11 AMMU

12 MUBARAK ALI

13 SAMEER BANU

14 ZAKKIRIYA

15 RASHEED

... PETITIONERS Nos.11 to 15/
PROPOSED APPELLANTS Nos.11 to 15
IN CMP(MD)No.10161 to 10164/17 IN SA.1462/97

Vs

1 S.RAMASAMY (DIED)

2.RAMACHANDRAN

3 RAMAKRISHNAN

4 KASTHURI

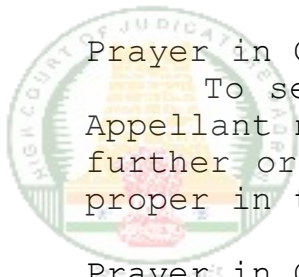
5 R.SHANMUGAM

6 S.PALANIKUMAR

... RESPONDENTS/PROPOSED RESPONDENTS Nos.2 to 6
IN ALL THE PETITIONS

PRAYER IN CMP(MD)No.10155/17 IN SA.No.1462/97:-

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 1080 days in filing the application seeking to set aside the abatement caused due to the death of 1st Appellant namely Ameer John on 30.11.2007 in the above Second Appeal



Prayer in CMP(MD). 10156/ 2017 IN SA.No.1462/97:- :

To set aside the abatement caused due to the death of the 1st Appellant namely Ameer John in the above Second Appeal and pass such further or orders passed as this Honourable Court may deem fit and proper in the circumstances of the case and render justice.

Prayer in CMP(MD). 10157/ 2017 IN SA.No.1462/97:-:

To bring on record the Petitioner No.5 to 7 herein as legal heirs of the deceased 1st Appellant namely Ameer John and rank them as Appellants No.5 to 7 in the above Second Appeal and pass such further or other orders, as this Honourable Court deems fit and proper in the circumstances of the case and thus render justice.

Prayer in CMP(MD). 10158/ 2017 IN SA.No.1462/97:-:

To condone the delay of 741 days in filing the application seeking to set aside the abatement caused due to the death of 2nd Appellant namely Anwar in the above Second Appeal.

Prayer in CMP(MD). 10159/ 2017 IN SA.No.1462/97:-:

To set aside the abatement caused due to the death of the 2nd Appellant namely Anwar in the above Second Appeal.

Prayer in CMP(MD). 10160/ 2017 IN SA.No.1462/97:-:

To bring on record the Petitioners No.8 to 10 herein as legal heirs of the deceased 2nd Appellant namely Anwar and rank them as Appellants NO.8 to 10 in the above Second Appeal.

Prayer in CMP(MD). 10161/ 2017 IN SA.No.1462/97:- :

To bring on record the Petitioners No.11 to 15 herein as legal heirs of the deceased 3rd Appellant namely Batcha and rank them as Appellants No.11 to 15 in the above Second Appeal.

Prayer in CMP(MD). 10162/ 2017 IN SA.No.1462/97:-:

To condone the delay of 1601 days in filing the application seeking to set aside the abatement caused due to the death of Respondent namely Ramasamy in the above Second Appeal.

Prayer in CMP(MD). 10163/ 2017 IN SA.No.1462/97:- :

To set aside the abatement caused due to the death of Respondent namely Ramasamy in the above Second Appeal.

Prayer in CMP(MD). 10164/ 2017 IN SA.No.1462/97:-:

To bring on record the Respondents 2 to 6 herein as legal heirs of the deceased Respondent namely Ramasamy and rank them as Respondents 2 to 6 in the above Second Appeal.

PRAYER IN SA No.1462 of 1997:-

Memorandum of Second Appeal against the Judgment and decree dated 14.11.1996 made in A.S.No.2/96 on the file of Court of I Additional Subordinate Judge, Madurai confirming the Decree and judgment dated 31.10.1995 made in O.S.No.698/83 on the file of the Court of Principal District Munsif, Madurai.

<https://hcservices.ecourts.gov.in/hcservices/>

ORDER : These petitions coming on for orders upon perusing the



petitions and the affidavits filed in support thereof and upon hearing the arguments of Mr.M.P.SENTHIL, Advocate for the petitioners in all the petitions and of Mr.F.X.EUGENE, Advocate for R2 to R6 in all the petitions, the court made the following order:-

These Miscellaneous Petitions are filed to condone the delay in seeking to set aside the abatement caused due to the death of the Appellants 1 to 3 and to set aside the abatement as well as to bring on record the legal representatives of the deceased in the main appeal.

2. Heard Mr.M.P.Senthil learned counsel for the petitioners/appellants and Mr.F.X.Eugene, learned counsel for the respondent.

3. Mr.F.X.Eugene, learned counsel for the respondent would submit that the second appeal arises out of the concurrent finding of the courts below, in which the courts below held that the respondent was the owner of the property and the originally appellants are encroachers. It is further stated that in E.P.No.23 of 2011, the respondent has taken delivery of possession on 17.04.2017 and the Court Amin has also filed a memo to that effect. However, in view of the pendency of these applications, the execution petition is not closed.

4. It is seen that in the affidavits filed in support of the applications, it has been stated that the first appellant died on 30.11.2007, the 2nd appellant died on 09.11.2008 and the 3rd appellant died on 29.03.2011 and the respondent Ramasamy died on 03.07.2006. Since the first appellant alone was looking after the case, the proposed appellants were not aware of the proceedings and only after the respondent laid the execution petition, these applications have been filed seeking condonation of 1080 days, 1601 days and 741 days respectively, but no materials have been produced to substantiate their case.

5. It is settled law that by condoning delay, settled position cannot be unsettled.

6 Considering the above facts, I am of the opinion that the petitioners have not given any proper explanation for condonation of enormous delay. Hence, all the Civil Miscellaneous Petitions are dismissed.

sd/-
13/11/2017

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

1 THE I ADDITIONAL SUBORDINATE JUDGE,
MADURAI

2 THE PRINCIPAL DISTRICT MUNSIF
MADURAI

JAM/30/11.17/CM-VR/SAR 4 / 4p-3c

ORDER
IN
CMP (MD) Nos.10155 to 10164 of 2017
IN
SA No.1462 of 1997
Date :13/11/2017