



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

Monday, the Eighteenth day of December Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice S.BASKARAN

CMP(MD) Nos.4500 and 4501 of 2017
IN
SA Nos.606 and 607 of 2004

1 MOHAMED HANIFA (DIED)
S/O. RAWTHAR NAINAR

2 RAMJAN BEEVI

3 THALAT (DIED)
S/O. HANIFA

... PETITIONERS/2nd APPELLANT
IN BOTH THE PETITIONS

Vs

IIAYANKUDI TOWN PANCHAYAT,
THROUGH ITS EXECUTIVE OFFICER,
IIAYANKUDI,
SIVAGANGAI DISTRICT.

... RESPONDENT/RESPONDENT
IN CMP(MD) No.4500 of 2017

1 SHAHUL HAMEED
2 PASASSARA BEEVI
3 AMEENAL BEEVI
4 SARIBA BEEVI

... RESPONDENTS/RESPONDENTS
IN CMP(MD) No.4501 of 2017

Prayer in CMP(MD) No.4500 of 2017:

Petition filed under Order 41 Rule 9 of CPC to set aside and restore the above S.A.(MD)No.606 of 2004 on file, which was dismissed for non prosecution on 06.07.2012 and decide the case on merits.

Prayer in CMP(MD) No.4501 of 2017:

Petition filed under Order 41 Rule 9 of CPC to set aside and restore the above S.A.(MD)No.607 of 2004 on file, which was dismissed for non prosecution on 06.07.2012 and decide the case on merits.

Common Prayer in SA Nos.606 and 607/2004 :

Appeals filed under Section 100 of CPC against the Judgment and Decrees dated 28/10/2003 made in A.S.Nos.43 and 66/2001 respectively on the file of Subordinate Judge, Sivaganga, confirming the



Judgments and decrees dated 30/04/2001 made in O.S.Nos.4 and 3/2000 respectively on the file of the District Munsif, Ilayangudi.

ORDER : These Civil Miscellaneous Petitions coming on for hearing on this day upon perusing the petitions and the affidavits filed in support thereof and upon hearing the arguments of Mr.S.I.A.K.BAGADUESHA, Advocate for the petitioner in both the petitions and of Mr.G.MUTHUKANNAN, Advocate for the respondent in CMP(MD)No.4500/2017, and the court made the following order:-

The petitioner has come forward with this petition seeking to restore the Second Appeal (MD) Nos.606 of 04 and 607 of 2004 which was dismissed for non prosecution on 06.07.2012.

2.The petitioner states that he filed O.S.No.4/2000 on the file of District Munsif Court, Ilayankudi, seeking declaration and injunction relating to the suit property and O.S.No.3/2000 was filed by the petitioners/neighbours on the file of the same District Munsif Court, Ilayangudi also for the relief of declaration and injunction claiming easementary right of pathway. The trial Court dispose both the suits by a common judgment and the suit filed by the neighbours of the petitioner was allowed, while the suit filed by the petitioner was dismissed, on 30.04.2001. Aggrieved over the same the petitioner herein preferred A.S.No.43/2001 and A.S.No.66/2001 and both appeals were dismissed by the District Court, Sivagangai, on 28.10.2003. Challenging the same the present Second Appeal 606/04 and 607/2004 was filed. Both the Second appeals were listed on 06.07.2012 under the caption of 'for dismissal' due to no representation. The petitioner's father was conducting the appeals and he died on 07.05.2012, while another appellant the mother of this petitioner died on 29.12.2012. The petitioner is the only legal heir for his parents first and third appellant. Subsequently, the petitioner contacted his counsel during April 2015 and he was informed that both Second Appeals were dismissed on 06.07.2012 due to non prosecution. Since the other appellants died and the petitioner is the only legal heir for them, he has now come forward with this petition seeks to restore the appeals which was dismissed for non prosecution. His non appearance was neither willful nor wanton. Since the first and third appellants died, this petitioner was unaware of the court proceedings. The petitioner says that the delay in taking steps was already condoned and he is having good case on merits and seeks to restore the appeals, unless he will be put to irreparable loss and damage.

3.The learned counsel for the respondent present and he has no serious objection to entertain this petition.

4.Considering the reasons stated by the petitioner and the fact that the delay in taking steps is already condoned by this Court and the respondent is having no objection, this Court is of the view that the petitioner can be given a chance to contest the matter on merits, in the interest of justice, for the reasons stated above,



this Court is inclined to entertain this petition.

5. In the result, this petition is allowed. The Registry is directed to restore both the Second Appeals (MD) No.606 of 2004 and 607 of 2004 on file.

WEB COPY

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

TO

1. THE DISTRICT JUDGE, SIVAGANGAI.
2. THE DISTRICT MUNSIF, ILAYANKUDI.

COPY TO:-

THE SECTION OFFICER,
JUDICIAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

DATED : 18.12.2017

ORDER

CMP(MD) Nos.4500 & 4501/2017 IN
SA Nos.606 and 607 of 2004

Restoring these Second Appeals
made in CMP(MD) Nos.4500 and
4501/2017 dated 18.12.2017
etc., as stated within.

TE/SV-MMS/SAR-3 : 18/01/2018 : 3P/4C