



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

Thursday, the Twenty Sixth day of October Two Thousand Seventeen

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PRESENT

The Hon`ble Mr Justice K.KALYANASUNDARAM

CMP(MD) Nos.540 to 548 of 2016

IN

SA No.745 of 1999

1 ATHIMOOLAM

2 A.BALAKRISHNAN

... PETITIONERS/ APPELLANTS
in all the petitions

Vs

1 V.BOOMI NAICKER (DIED)
S/O.VARADHA NAICKER

2 K.BOMMI NAICKER (DIED)
S/O.KANNIAH NAICKER

3 K.KAMAYA NAICKER (DIED) ... 1 TO 3 RESPONDENTS / RESPONDENTS
in all the petitions

4 KANNIAMMAL

5 PAVUNATHAI

6 VELUTHAI ... RESPONDENTS 4 TO 6/
PROPOSED RESPONDENTS 4 TO 6/ Lrs OF 1st RESPONDENT
in all the petitions

7 SUBBAKKAL

8 ANDIVEL ... RESPONDENTS 7 & 8/ PROPOSED RESPONDENTS 7 & 8
Lrs OF 2nd RESPONDENT
in all the petitions

9 CHINNATHAI

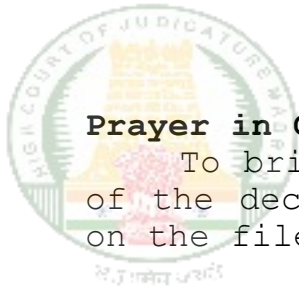
10 CHELLASAMY ... RESPONDENTS 9 & 10/ PROPOSED RESPONDENTS 9 & 10/
Lrs OF 3rd RESPONDENT
in all the petitions

Prayer in CMP(MD) . 540/ 2016 :

To condone the delay of 2880 days in filing the petition to set aside the abatement caused due to the death of 1st Respondent in S.A.No.745 of 1999.

Prayer in CMP(MD) . 541/ 2016 :

To set aside the abatement caused due to the death of the 1st respondent in S.A.No.745 of 1999.



Prayer in CMP(MD) . 542/ 2016 :

To bring the respondents 4 to 6 herein as legal representatives of the deceased 1st respondent in the appeal in S.A.No.745 of 1999 on the file of this Honourable Court.

Prayer in CMP(MD) . 543/ 2016 :

To condone the delay of 1806 days in filing the petition to set aside the abatement caused due to the death of 2nd Respondent in S.A.No.745 of 1999.

Prayer in CMP(MD) . 544/ 2016 :

To set aside the abatement caused due to the death of the 2nd respondent in S.A.No.745 of 1999.

Prayer in CMP(MD) . 545/ 2016 :

To bring the respondents 7 & 8 herein as legal representatives of the deceased 2nd respondent in the appeal in S.A.No.745 of 1999 on the file of this Honourable Court and thus render justice.

Prayer in CMP(MD) . 546/ 2016 :

To condone the delay of 576 days in filing the petition to set aside the abatement caused due to the death of 3rd Respondent in S.A.No.745 of 1999.

Prayer in CMP(MD) . 547/ 2016 :

To set aside the abatement caused due to the death of the 3rd respondent in S.A.No.745 of 1999.

Prayer in CMP(MD) . 548/ 2016 :

To bring the respondents 9 & 10 herein as legal representatives of the deceased 3rd respondent in the appeal in S.A.No.745 of 1999 on the file of this Honourable Court and thus render justice.

PRAYER IN SA No.745 of 1999:-

To prefer this Memorandum of Second Appeal against the judgment and decree of the Subordinate Judge, Dindigul dated 25.08.1998 in A.S.No.80/84 as confirmed the judgment and decree of the learned Principal District Munsif, Dindigul dated 6.4.84 in O.S.No.893/82.

ORDER : These petitions coming on for orders upon perusing the petitions and the affidavit filed in support thereof and upon hearing the arguments of M/S.S.SIVA THILAKAR, Advocate for the petitioner in all the petitions and of M/S.M.RAMESH, Advocate for V.RAGAVACHARI, Advocate for R4 to R10 in all the petitions, the court made the following order:-

These petitions are filed to bring on the legal heirs of the deceased respondents 1 to 3.

2. The learned counsel appearing for the petitioners would submit that the deceased respondents have filed the suit for declaration and permanent injunction before the District Munsif



Court in O.S.No.893 of 1982. The said suit was decreed, after contest and against the decree, the petitioners have preferred an appeal. Though the respondents 1 to 3 died on 05.11.2006, 13.10.2009 and 25.02.2013, the details of the legal heirs were not furnished by the counsel and therefore, there was delay in filing these petitions. The learned counsel further submits that they have chances to succeed in the second appeal.

3.Per contra, the learned counsel appearing for the respondents contended that the petitioners were aware of the death of the respondents, but no steps were taken to bring on the legal heirs and the delay was not properly explained by the petitioners.

4.However, considering the fact that the suit was filed claiming right over the immovable property and in order to give opportunity to the petitioners, this Court is inclined to allow these petitions on payment of cost. Accordingly, these petitions are allowed on condition that the petitioner shall pay a sum of Rs.10,000/- (Rupees Ten Thousand only) to the learned counsel appearing for the respondents, within a period of two weeks, failing which, these petitions shall stand dismissed automatically without any further reference to this Court.

sd/-
26/10/2017

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

TO

1. THE SUBORDINATE JUDGE,DINDIGUL.
- 2 THE PRINCIPAL DISTRICT MUNSIF,DINDIGUL.

ORDER IN
CMP(MD) Nos.540 to 548 of
2016
IN
SA No.745 of 1999
Date :26/10/2017

MS/PM-PN/SAR.1/07.11.2017/3P.3C