



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

Wednesday, the Twenty Second day of November Two Thousand Seventeen

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PRESENT

The Hon`ble Mr.Justice S.BASKARAN

CMP(MD) Nos.7828 to 7830 of 2017

IN

SA(MD) No.222 of 2006

1 YESODA (DIED)
2 LAKSHMANAN (DIED)
3 VARADHAN (DIED)
4 BHASKAR

5 PADMA
6 NIRMALA
7 THIAGARAJAN (DIED)

...PETITIONERS/APPELLANTS
IN ALL THE PETITIONS

8 SANGEETHA
9 L.PRABAKARAN

...PETITIONERS (Lrs OF DECEASED 2nd
APPELLANT)/8th & 9th PROPOSED APPELLANTS
IN ALL THE PETITIONS

10 V.KARTHIK
11 V.SUDHAKAR

...PETITIONERS (Lrs OF DECEASED 3rd
APPELLANT)/10th & 11th PROPOSED APPELLANTS
IN ALL THE PETITIONS

12 T.VALLI
13 T.BALAJI
14 T.AKILA

...PETITIONERS (Lrs OF DECEASED 7th
APPELLANT)/12 & 14 PROPOSED APPELLANTS
IN ALL THE PETITIONS

Vs

1 RAMAMIRTHATHAMMAL (DIED)

2 SEKAR,
3 UMA DEVI
4 INDIRA
5 BALA

... PROPOSED RESPONDENTS 3 to 5/
LRs OF THE DECEASED 1st RESPONDENT
IN ALL THE PETITIONS

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 395 days in filing the petition to set aside the abatement caused due to the death of the 2nd Appellant in the above Second Appeal and thus render justice.



Prayer in CMP(MD). 7829/ 2017 :

To set aside the abatement caused due to the death of the 2nd Appellant in the above Second Appeal and thus render justice.

Prayer in CMP(MD). 7830/ 2017 :

To bring on record the Petitioners 8 and 9 herein, who are the legal representatives of the deceased 2nd Appellant namely Lakshmanan and rank them as Appellants 8 & 9 in the above Second Appeal in SA.No.222 of 2006 and thus render justice.

Prayer in SA(MD). 222/ 2006 :

To set aside the Decree and Judgment dt. 12/07/2005 made in AS.32/2002 on the file of the Additional Subordinate Judge, Kumbakonam, dismissing the appeal confirming the decree and Judgment made in OS.472/1992 dt. 23/12/1998 on the file of the 1st Additional District Munsif Court, Kumbakonam by allowing the Second Appeal and to grant such other relief or reliefs as this Honourable Court may deem fit and proper in the circumstances of the case and thus render justice.

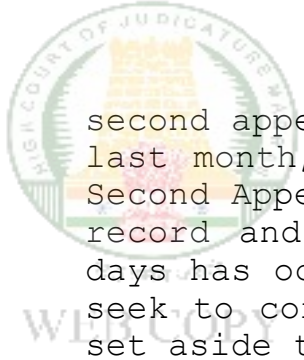
ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.K.GUHAN, Advocate for the petitioner in all the petitions and of M/S.VIJAYASHANTHI, learned Counsel for the 2nd respondent in all the petitions and of MR.GANGAI AMARAN, learned Counsel for the respondents 3 to 5 in all the petitions the court made the following order:-

The petitioners/Appellants have come forward with these petitions seeking to condone the delay of 395 days in filing the petition to set aside the abatement, to set aside the abatement caused due to the death of the second appellant and to bring on record the petitioners 8 and 9 herein, who are the legal representatives of the deceased second appellant and rank them as appellant numbers 8 and 9 in the Second Appeal.

2.The second appellant died on 11.02.2016 leaving behind the petitioners 8 and 9 as his legal representatives. According to the petitioners, the legal representatives of the petitioners ought to have filed the petitions on or before 10.05.2016. But the same was filed only on 08.07.2016.

3.The petitioner states that the first respondent herein filed a suit in O.S.No.472 of 1992 on the file of the 1st Additional District Munsif Court, Kumbakonam for mortgage and redemption of suit property and the same was decreed. Aggrieved over the same, the deceased appellant and all other appellants preferred an appeal in A.S.No.32 of 2002 on the file of the Additional Subordinate Judge, Kumbakonam and the same was dismissed.

4.Hence, the present Second Appeal was filed by the deceased second appellant along with six others and during pendency of the



second appeal, the second appellant has passed away. Only during the last month, the petitioners came to know about the pendency of the Second Appeal and immediately they have taken steps only to bring on record and during that process of taking steps, the delay of 395 days has occurred to set aside the abatement. Hence, the petitioners seek to condone the delay of 395 days for filing a petition and to set aside the abatement.

5.The learned counsel for the respondents 2 to 5 are present and they have no objection.

6.Considering the said circumstances and also considering the fact that the delay is nominal and the other appellants were already on record, this Court is inclined to entertain the petitions, in the interest of justice. Accordingly, these petitions are allowed.

sd/-
22/11/2017

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

TO

1 THE ADDITIONAL SUBORDINATE JUDGE, KUMBAKONAM

2 THE 1ST ADDITIONAL DISTRICT MUNSIF, KUMBAKONAM

ORDER
IN
CMP (MD) Nos.7828 to
7830 of 2017
IN
SA (MD) No.222 of 2006
Date :22/11/2017 (1/4)

GJM/CM-VR/SAR-1/13.12.2017:3P/3C