



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

Wednesday, the Twenty Second day of November Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice S.BASKARAN

CMP(MD) No.7831 TO 7833 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/APELLANTS
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 TO 14 PROPOSED APPELLANTS
IN ALL THE PETITIONS

Vs

1 RAMAMIRTHATHAMMAL (DIED)
2.SEKAR,

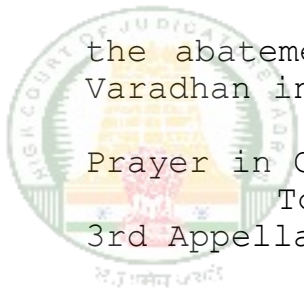
...RESPONDENTS/RESPONDENTS
IN ALL THE PETITIONS

2 SEKAR,
3 UMA DEVI
4 INDIRA
5 BALA

... PROPOSED RESPONDENTS 3TO5/
L.RS. OF THE DECEASED 1ST RESPONDENT
IN ALL THE PETITIONS

PRAYER IN CMP(MD)NO.7831/2017 IN SA(MD)NO.222/2006 :

Petition praying that in the circumstances stated therein
and in the affidavit filed therewith the High Court may be pleased
to condone the delay of 729 days in filing the petition to set aside



the abatement caused due to the death of the 3rd Appellant namely Varadhan in the above Second Appeal.

Prayer in CMP(MD). 7832/ 2017 IN SA(MD)NO.222/2006 : :

To set aside the abatement caused due to the death of the 3rd Appellant namely Varadhan in the above Second Appeal.

Prayer in CMP(MD). 7833/ 2017 IN SA(MD)NO.222/2006 : :

To bring on record the 10th and 11th herein, who are the legal representatives of the deceased 3rd Appellant namely Varadhan and rank them as Appellants 10th and 11th in the above Second Appeal in SA.NO.222 of 2006.

PARYER IN SA(MD)NO.222/2006 :

Second Appeal filed under section 100 of C.P.C., praying to set aside the decree and judgment dated 12.07.2005 made in A.S.No.32 of 2002 on the file of the Additional Subordinate Judge, Kumbakonam dismissing the appeal confirming the decree and judgment made in O.S.No.472 of 1992 dated 23.12.1998 on the file of the 1st Additional District Munsif Court, Kumbakonam by allowing the Second Appeal.

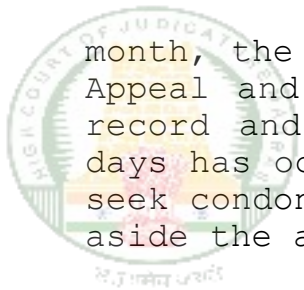
ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.K.GUHAN, Advocate for the petitioner in all the petitions and of M/S.VIJAYASHANTHI, learned Counsel for the 2nd respondent in all the petitions and of 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 729 days in filing the petition to set aside the abatement, to set aside the abatement caused due to the death of the third appellant and to bring on record, the petitioners 10 and 11 herein who are the legal representatives of the deceased third appellant and rank them as appellant numbers 10 and 11 in the Second Appeal.

2.The third appellant died on 14.03.2015 leaving behind the petitioners 10 and 11 as his legal representatives. According to the petitioners, the legal representatives of the petitioners ought to have filed the petitions on or before 11.06.2015. But the same was filed only on 09.08.2015.

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 third appellant along with six others and the 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 due to bring on record and during that process of taking steps, the delay of 729 days has occurred to set aside the abatement. Hence, the petitioners seek condone the delay of 729 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 SUBORINATE JUDGE, KUMBAKONAM

2 THE 1ST ADDITIONAL SUBORDINATE JUDGE, KUMBAKONAM

GJM/CM/SAR-I-14.12.2017-3P-3C

ORDER
IN
CMP(MD) No.7831 TO 7833of 2017
IN
SA(MD) No.222 of 2006
Date :22/11/2017 (2/4)