



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.7834 to 7836 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 429 days in filing the petition to set aside the abatement caused due to the death of the 7th Appellant namely Thiagarajan in the above Second Appeal.



Prayer in CMP(MD). 7835/ 2017 :

To set aside the abatement caused due to the death of the 7th Appellant namely Thiagarajan in the above Second Appeal.

Prayer in CMP(MD). 7836/ 2017 :

To bring on record the 12th to 14th Proposed Petitioners, who are the legal representatives of the deceased 7th Appellant namely Thiagarajan and rank them as 12th to 14th Appellants in the above Second Appeal in SA.NO.222 of 2006.

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 429 days in filing the petition to set aside the abatement, to set aside the abatement caused due to the death of the seventh appellant and to bring on record the petitioners 12 and 14 herein, who are the legal representatives of the deceased seventh appellant and rank them as appellant numbers 12 and 14 in the Second Appeal.

2.The seventh appellant died on 08.01.2016 leaving behind the petitioners 12 and 14 as his legal representatives. According to the petitioners, the legal representatives of the petitioners ought to have filed the petitions on or before 06.04.2016. But the same was filed only on 04.06.2016.

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.



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 429 days has occurred to set aside the abatement. Hence, the petitioners seek condone the delay of 429 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.7834 to
7836 of 2017
IN
SA (MD) No.222 of 2006
Date :22/11/2017 (3/4)

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