



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Wednesday, the Eighth day of November Two Thousand and Seventeen

CORAM :

The Hon`ble Mr.Justice S.BASKARAN

CMP(MD) No.6836 of 2016
IN
SA(MD) No.847 of 2012

V.RAMESH

... PETITIONER

Vs

1 THANGAM
2 SIVAKUMAR
3 SIVAKAMI SIVADHASAN
4 K.C.RAJAN

... RESPONDENTS

Prayer in CMP(MD) No.6836 of 2016:

Civil Miscellaneous Petition is filed under Order 41 Rule 19 of Civil Procedure Code praying this Hon'ble Court to set aside the order dated 21.01.2013 made in SA.(MD).No.847/2012 and consequently restore the above SA.(MD).No.847/2012.

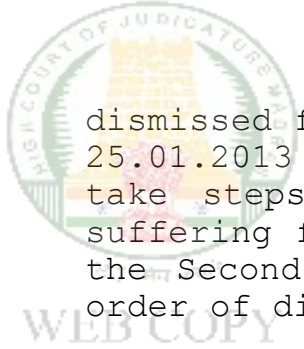
Prayer in SA(MD) No.847 of 2012:

Second Appeal has been filed under section 100 of the Code of Civil Procedure, 1908, against the judgment and decree dated 08/09/2011 made in A.S.No.25 of 2011 on the file of the Subordinate Judge, Padmanabapuram confirming the judgment and decree dated 25/06/2010 made in O.S.No.139 of 2007 on the file of the Additional District Munsif Court, Eraniel.

ORDER : This Petition coming on for hearing on this day, upon perusing the affidavit and material papers filed, and upon hearing the arguments of Mr.D.RAJENDIRAN, Advocate for the petitioner the court made the following order:-

The petitioner has come forward with this petition seeking to to restore the Second Appeal in S.A(MD).No.847 of 2012 which was dismissed for non-prosecution on 21.01.2013.

2.The petitioner states that he filed O.S.No.139 of 2007 on the file of the Additional District Munsif Court, Eraniel, for Redemption of suit property and the same was dismissed by the Trial Court on 25.06.2010. Aggrieved over the same, the petitioner filed A.S.No.25 of 2011 and the same was dismissed by the first Appellate Court on 08.09.2011. Hence, the petitioner filed the Second Appeal and the same was listed for hearing on 21.01.2013. On that day, as there was no representation for the appellant the Appeal was



dismissed for default and the counsel came to know about the same on 25.01.2013 and immediately, the counsel contacted the petitioner to take steps to restore the appeal. Further, the petitioner was suffering from illness and that is why he took some time to restore the Second Appeal. Hence, the petitioner seeks to set aside the order of dismissal and restore the Second Appeal on record.

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

4.In such circumstances, in view of the reason stated by the petitioner and the fact that no representation on behalf of the petitioner was only due to the counsel had been held in other Court, this Court is inclined to entertain this petition.

5.In the result, this petition is allowed and the Registry is directed to restore the above Second Appeal in S.A(MD).No.847 of 2012 on the file.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

TO

1. THE SUBORDINATE JUDGE,
PADMANABHAPURAM.
2. THE ADDITIONAL DISTRICT MUNSIF,
ERANIEL.

COPY TO:-

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

DATED : 08/11/2017

RESTORE

CMP(MD) No.6836 of 2016 IN
SA(MD) No.847 of 2012



WEB COPY