



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

Monday, the Thirtieth day of October Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice K.KALYANASUNDARAM

CMP(MD) No.9243 TO 9245 of 2016

IN

SA No.1141 of 1994

1 RAMU VELALAR,
2 S.CHELLAIAH VELAR
3 P.ARUMUGA VELAR,

... PETITIONERS/APPELLANTS
IN ALL THE PETITIONS

Vs

1 MARRIAMMAL (DECD)
2 SOMASUNDARAM (DECD)
3 SHOBANA
4 KANCHANA
5 KALPANA
6 SALINI

... RESPONDENTS/RESPONDENTS
IN ALL THE PETITIONS

7 GANAPATHY AMMAL
8 UDAYASURIYAN
9 S.RAMESH

... RESPONDENTS/PROPOSED
RESPONDENTS 7 TO 9
IN ALL THE PETITIONS

PRAYER IN CMP(MD)NO.9243/2016 IN SA.NO.1141/1994 :

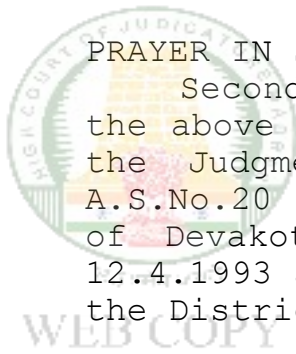
Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 5528 days in filing the petition to set aside the abatement caused due to the death of the 2nd respondent viz., M.Somasundaram in the above S.A.No.1141 of 1994 on the file of this Honourable Court and thus render justice.

Prayer in CMP(MD). 9244/ 2016 :

To set aside the abatement caused due to the death of the 2nd respondent viz., M.Somasundaram in the above S.A.No.1141 of 1994 on the file of this Honourable Court and thus render justice.

Prayer in CMP(MD). 9245/ 2016 :

To bring on records the following persons viz.,
1.Mrs.Ganapathy Ammal, Wife-aged about 40 yrs 2.S.Udayasuriyan, Son-aged about 35 years 3. S.Ramesh Son-aged about 27 years as the legal representatives of the deceased 2nd respondent viz. M.Somasundaram in the above S.A.No.1141 of 1994 on the file of this Honourable Court and thus render justice.



PRAYER IN SA.NO.1141/1994 :

Second Appeal filed under Section 100 C.P.C., praying to prefer the above Memorandum of Second Appeal to this Hon'ble Court against the Judgment and decreetal order dated 28.4.1994 and made in A.S.No.20 of 1993 on the file of the Court of the Subordinate Judge of Devakottai reversing the judgment and decreetal order dated 12.4.1993 and made in O.S.No.457 of 1990 on the file of the Court of the District Munsif of Devakottai.

ORDER : These petitions coming on for orders upon perusing the petitions and the affidavits filed in support thereof and upon hearing the arguments of M/S. G.GOMATHI SANKAR, Advocate for the petitioner in all the petitions and of MR.K.K.SENTHIL, Advocate for the Respondents 3 to 6 and of MR.S.C.HEROLD SINGH, Advocate for the Respondents 7 to 9 the court made the following order:-

These Miscellaneous Petitions have been filed to condone the delay of 5528 days in filing the petition to set aside the abatement caused due to the death of the second respondent; to set aside the abatement caused due to his death; and to bring on record his legal representatives.

2.Mr.G.Gomathi Sankar, learned counsel for the petitioner would submit that the first respondent filed a suit in O.S.No.457 of 1990 against the petitioner and other respondents for declaration and for consequential injunction. Though the trial Court dismissed the suit, it was reversed by the appellate Court in A.S.No.20 of 1993. During the pendency of the appeal suit, the second respondent died on 06.03.2001, but it was informed to the counsel only when the second appeal was listed for hearing in the month of September, 2016 and hence, there is a delay.

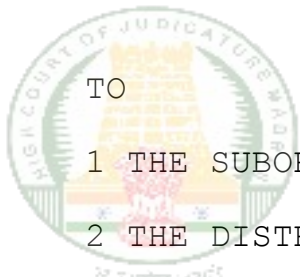
3.Mr.S.C.Herold Singh, learned counsel appearing for the respondent 7 to 9 would submit that there is no proper explanation in the affidavit for condoning the delay.

4.Considering the above fact and having been satisfied with the reasons assigned in the affidavit filed in support of the Miscellaneous Petitions, C.M.P(MD)No.9243 of 2016 is ordered and the delay of 5528 days in filing the petition to set aside abatement, is condoned on payment of cost of Rs.1,000/- each to the counsel for the respondents, on or before 13.11.2017, failing which, this petition shall stand dismissed automatically, without further reference to this Court. Consequently, C.M.P(MD)Nos.9244 & 9245 of 2016 are also ordered.

5.Registry is directed to carry out necessary amendments in the cause title.

sd/-
30/10/2017

/ TRUE COPY /



TO

1 THE SUBORDINATE JUDGE, DEVAKOTTAI

2 THE DISTRICT MUNSIF, DEVAKOTTAI

COPY TO : THE SECTION OFFICER,
JUDICIAL SECTION,

MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

SMA/RR/SAR-1-6.11.2017-2P-4C

ORDER
IN
CMP (MD) No.9243 TO 9345 of 2016
IN
SA No.1141 of 1994
Date :30/10/2017