

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 17.12.2018

CORAM
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No.446 of 1995
and
M.P.(MD) Nos.1 to 3 of 2008

Kadirvel

..Appellant/Plaintiff

Versus

1.Ganesan
2.Rajendran
3.Murugesan

..Respondents/Defendants

PRAYER:Second Appeal has been filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 23.02.1994 made in A.S.No.87 of 1990 on the file of the Subordinate Judge at Ariyalur confirming the judgment and decree dated 23.03.1990 made in O.S.No.462 of 1987 on the file of the Additional District Munsif at Ariyalur.

For Appellant :: M/s.Sarvabhauman Associates

ORDER

The Second Appeal has been filed by the plaintiff in O.S.No.462 of 1987 on the file of the Additional District Munsif Court, Ariyalur. The said suit was filed for declaration of title and possession of the first item of property in the suit and for partition and possession of 1/4th share in the second item of property and partition and possession of 1/6th share in the third item of the suit property. The suit was dismissed by the District Munsif on 23.03.1990. The plaintiff filed in A.S.No.87 of 1990 before the Sub-Court, Ariyalur. The learned Sub-Judge also dismissed the appeal by judgment and decree dated 23.02.1994. Thereafter, the plaintiff had filed the present Second Appeal.

2. Pending the appeal, the first respondent-Ganesan died. Consequently, the above three applications were filed seeking to condone the delay of 1577 days in filing the application to set aside the abatement, to set aside the abatement and to bring on record the legal representatives of the deceased first respondent-Ganesan as respondents 3 to 7. These applications have been pending from the year 2008. No attempt has been made to effect any progress. The only reason given in the affidavit to explain the inordinate delay was that the applicant came to know about the death of the first respondent only recently.

3. However, on perusal of the cause title it is seen that both the appellant and the first respondent are residing of the same village namely Maruvathur Village, Ariyalur District.

4. In the affidavit, the reason for extremely large delay of nearly five years has not been explained to the satisfaction of the Court.

5. Today, when the matter came up it is also informed that the appellant-Kadirvel had also died more than three years back. Steps have not been taken to implead his legal representatives of the appellant. It is clear they are also not interested in prosecuting the appeal.

6. Accordingly, this Second Appeal is dismissed as abated. No costs. Consequently, connected Miscellaneous Petitions are closed. Whenever the details of legal representatives are known, necessary applications can be filed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Subordinate Judge at Ariyalur
- 2.The Additional District Munsif at Ariyalur.
- 3.The Section Officer,
VR Section, High Court,
Madras - 600 104.

+lcc to Mr.K.Sukumaran, Advocate, S.R.No.87995

+lcc to M/s.Sarvabhauman Associates, Advocate, S.R.No.88070

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EV(CO)

rrs 28/01/2019