

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Monday, the Thirteenth day of August Two Thousand Eighteen

PRESENT

THE HON`BLE MR JUSTICE P.RAJAMANICKAM

CMP.No.4307 of 2018
in Rev.A.No.76 of 2017 in S.A.No.210/1998

and

CMP.No.12560 of 2018
in Rev.A.No.75 of 2017 in S.A.No.209/1998

BARATHI [DECEASED]

1 B.BANUMATHI [PETITIONER IN BOTH THE
PETITIONS]

2 M.SIYAMALA

3 VIDJEAMALA

4 B.PARTHIBAN

5 B.USHARANI

Vs

1 PALINI @ BOOLAGANATHAN (DIED) [1 TO 6 RESPONDENTS IN BOTH
THE PETITIONS]

2 MARAGATHAVALLI (DIED)

3 SELVAZAGI

4 MANOHARAN

5 KARUNAKARAN

6 THANANJAYAN @ MURUGESAN (DIED)

7 ANUSUYA (DIED) [7th RESPONDENT IN CMP.4307/18
& 15th RESPONDENT IN CMP.12560/18]

8 BALAKRISHNAN [8th RESPONDENT IN CMP.4307/18
& 13th RESPONDENT IN CMP.12560/18]

9 CHANDRASEKARAN (DIED) [9th RESPONDENT IN CMP.4307/18
& 14th RESPONDENT IN CMP.12560/18]

10 RAMACHANDRAN [10th RESPONDENT IN CMP.4307/18
& 11th RESPONDENT IN CMP.12560/18]

11 VELAYUDHAM [11th RESPONDENT IN CMP.4307/18
& 12th RESPONDENT IN CMP.12560/18]

12 GOVINDAN [12 TO 14 RESPONDENTS IN CMP.4307/18
& 7 TO 9 RESPONDENTS IN CMP.12560/18]
13 B.VIJAYAN
14 MOHANRAJ
15 SAKUNTHALA [15 TO 18 RESPONDENTS IN CMP.4307/18
& 16 TO 19 RESPONDENTS IN CMP.12560/18]
16 SAMPATHKUMAR
17 SUBATHIRA
18 PREMKUMAR
19 M.BAKTHAVATCHALAM [19th RESPONDENT IN CMP.4307/18
20th RESPONDENT IN CMP.12560/18]
20 RATHINAVELU [20th RESPONDENT IN CMP.4307/18]
BHARATHI [DIED] [10th RESPONDENT IN CMP.12560/18]

Petitions praying that in these circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to implead the petitioners as party respondents 16 to 20 in the Review Petition(in CMP.No.4307/2018) and

(ii) Bring the petitioners as legal representatives of the deceased 5th appellant in the aboe Review Petition(in CMP.No.12560/2018).

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.A.V.ARUN, Advocate for the petitioner in both the petitions and of M/S.MANISUNDARGOPAL, Advocate 7th & 14th RESPONDENT IN CMP.4307/18 & 2th & 15th RESPONDENT IN CMP.12560/18 and of M/S.ELIZABETH RAVI, Advocate for the 1 to 5 respondents in both the petitions for the the court made the following order:-

CMP.No.4307 of 2018 has been filed by the legal representatives of one Bharati who is the fifth appellant in the connected S.A.No.209 of 1998, to implead themselves as respondents 16 to 20 in Review Application in Rev.A.No.76 of 2017 in S.A.No.210 of 1998.

2. CMP.No.12560 of 2018 has been filed by the legal representatives of the deceased fifth appellant in S.A.No.209 of 1998 to implead themselves as respondents in Review Application in Rev.A.No.75 of 2017 in S.A.No.209 of 1998.

3. The brief facts are as follows:

One Palani @ Boologanathan had filed a suit in O.S.No.412 of 1987 on the file of the II Additional District Munsif, Puduchery, against one D.Chakrapani and others for the relief of declaration of title with regard to the suit property based on the donation deed dated 06.11.1985.

4. In the said suit, the husband of the first petitioner herein and father of the petitioners 2 to 5 herein viz., Bharathi was arrayed as sixth defendant. One Thanajayan filed a suit against D.Chakrapani and Others in O.S.No.1462 of 1986 challenging the donation deed dated 06.11.1985. Both the suits were tried jointly and a common judgment was passed on 29.04.1991. The trial court has decreed the suit in O.S.No.1462 of 1986 holding that the share in respect of the 7/8 share of the suit property is set aside and reserved for the heirs of the deceased Chakrapani and decreed the suit in O.S.No.412 of 1987 in respect of one-eighth share of the suit property in favour of the plaintiff therein i.e., Palani @ Boologanathan. The appeals have been filed there on in A.S.Nos.54 of 1995 and 55 of 1995 and were allowed by the Principal District Judge on 29.04.1997 decreeing the suit in O.S.No.412 of 1987 in entirety and dismissing the suit in O.S.No.1462 of 1986.

5. Aggrieved over the same, the second appeal in S.A.Nos.209 and 210 of 1998 were filed before this court. Pending second appeals, the said Bharathi who was arrayed as fifth appellant in S.A.No.209 of 1998 died on 01.09.2005 leaving behind the petitioners herein to succeed his estate. However, no application was filed to bring the legal representatives on record in S.A.No.209 of 1998. This court by the judgment dated 29.03.2012, allowed the second appeals thereby restored the judgment and decree of the trial court. Challenging the same, the legal representatives of Palani @ Boologanathan filed SLP's before the Hon'ble Supreme Court of India in SLP (Civil) Nos.8772 and 8773 of 2013.

6. The Hon'ble Supreme Court by the order dated 25.05.2017 disposed of the aforesaid SLP's granting liberty to the petitioners to file review petitions before this court.

7. According to the petitioners, as per the directions of the Hon'ble Supreme Court, the respondents 1 to 5 herein have filed the above review applications. But in the said review applications, the petitioners herein have not been impleaded as parties. Their further case is that they have compromised the issue with the respondents 1 to 5 herein and hence, they have filed application before the Hon'ble Supreme Court itself to record the compromise, but the Hon'ble Supreme Court while disposing of the Special Leave Petitions, granted liberty to the petitioners therein to file review petitions before this court, also granted liberty to the parties to record the compromise before this court and hence, they have to be impleaded as respondents in the above review applications.

8. The respondents 1 to 5 have not raised any objection. But other respondents opposed these petitions stating that the review applications have not been filed within the time stipulated by the Hon'ble Supreme Court. Their further contention is that these petitioners were left out in the review applications and only with a view to get over the same, the review applicants have set up these petitioners to file these petitions. Their further contention is that these petitioners are not at all necessary parties to the review applications and therefore, they strongly opposed these petitions.

9. Admittedly, the petitioners herein are the legal representatives of one Bharathi, who was arrayed as fifth appellant in S.A.No.209 of 1998. According to the petitioners, during pendency of the said Second Appeal, the said Bharathi died on 01.09.2005 itself, but since they were not aware of the proceedings pending before this court, they did not file any petition to implead themselves as legal representatives in the said second appeal. However, the said second appeal along with connected S.A.No.210 of 1998 was disposed of by this Court on 29.03.2012 and both the second appeals were allowed restoring the judgment and decree passed by the trial court.

10. It is not disputed that the legal representatives of Palani @ Boologanathan have filed SLP.Nos.8772 & 8773 of 2013 before the Hon'ble Supreme Court and the petitioners herein also filed an application stating that they have compromised the matter with the petitioners therein and the same has to be recorded. The Hon'ble Supreme Court by the order dated 25.04.2017, has disposed of the aforesaid SLPs granting liberty to the petitioners therein to file review applications before this court and also petitioners herein to file a compromise petition before this court. Under these circumstances, this court is of the view that these petitions have to be allowed. The question as to whether the review applications have not been filed within the time stipulated by the Hon'ble Supreme Court will have to be decided at the time of disposal of review applications.

11. With the aforesaid observations, this court is inclined to allow these petitions.

12. In the result, these petitions are allowed. No costs. The question as to whether the review applications have been filed within the time stipulated by the Hon'ble Supreme Court will have to be decided at the time of disposal of the review applications.

-sd/-

13/08/2018

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL DISTRICT JUDGE,
PONDICHERRY.

2 THE II ADDITIONAL DISTRICT MUNSIF,
PONDICHERRY.

C.C. to M/S.A.V.ARUN, Advocate on payment of necessary charges

C.C. to M/S.MANISUNDARGOPAL, Advocate Sr.No.9702.

+2C.C. to M/S.ELIZABETH RAVI, Advocate Sr.No.9683, 9684

Order

in

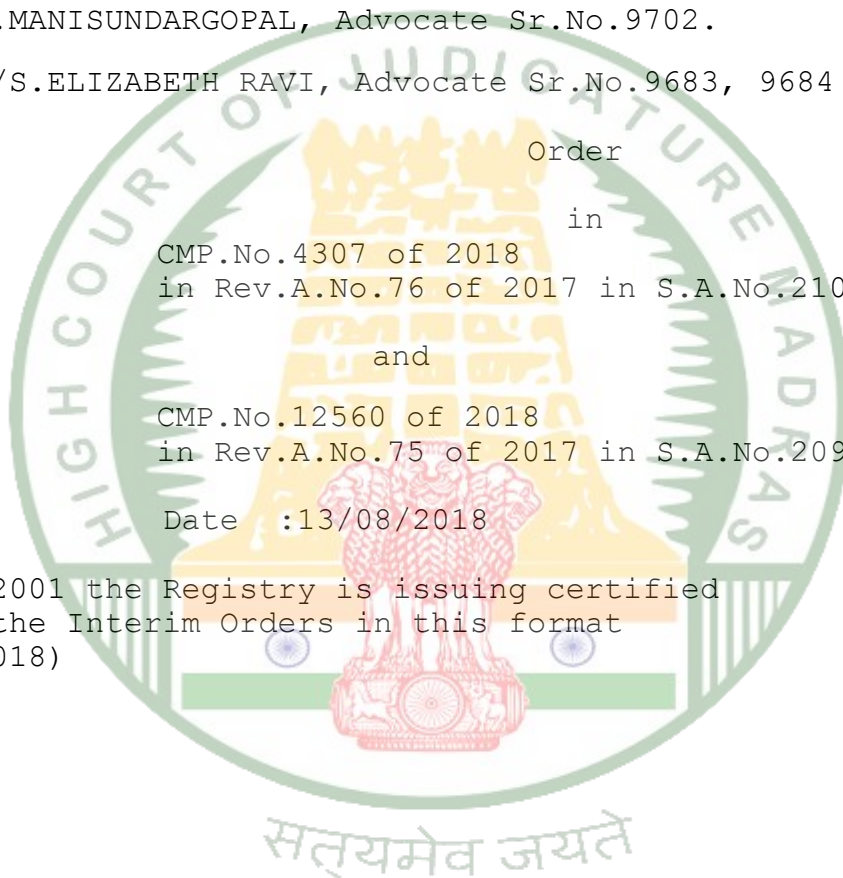
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and

CMP.No.12560 of 2018
in Rev.A.No.75 of 2017 in S.A.No.209/1998

Date :13/08/2018

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copies of the Interim Orders in this format
KP(20/08/2018)



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