

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.698 of 2010

and

M.P.No.1 of 2010 and M.P.No.1 of 2015

Ramesh alias Ezhumalai

Vs

.. Petitioner

Vijayalakshmi
rep.by her Power Agent,
Sivapragasam

.. Respondent

PRAYER: Civil Miscellaneous Appeal filed under section 104 and Order XLIII Rule (r) of Civil Procedure Code, to call for the records in I.A.No.224 of 2009 in O.S.No.32 of 2009 before the II Additional District Court, Puducherry, to set aside the order dated 09.09.2009 in I.A.No.224 of 2009 in O.S.No.32 of 2009.

For Petitioner : (No Appearance)

For Respondent : Mr.R.Thiagarajan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed to call for the records in I.A.No.224 of 2009 in O.S.No.32 of 2009 before the II Additional District Court, Puducherry, to set aside the order dated 09.09.2009 in I.A.No.224 of 2009 in O.S.No.32 of 2009.

2. There is no representation on the side of the appellant. Heard the learned counsel for the respondent and perused the available records.

3. It could be seen from the records that it has been represented before the Court that the appellant died long ago and two weeks time was granted on 05.01.2015 to bring the legal heirs on record. Again when the matter was called on 08.06.2018, the counsel for the appellant sought time and the matter was adjourned to 26.06.2018. When the matter is listed

today, there is no representation for the appellant.

4. It could be seen from the records that one Iyyappan, Minor son of the petitioner, represented by his Maternal Grand Mother - Mangai, W/o.late Loganathan, has filed a petition in M.P.No.1 of 2015 to condone the delay in representing a petition for setting aside the abatement. No notice has been ordered in the said petition. In the affidavit filed in support of the said petition, it has been submitted that pending suit and this appeal, the appellant/petitioner/defendant in the suit died on 30.11.2012 and was survived by his three children namely: (i) Iyyanar, Hindu, aged 21 years, (ii) Angala Parameswari (later died unmarried on 20.04.2013), (iii) Iyyappan (minor), Hindu aged 17 years. Since sole interested legal representative/legal heir of deceased 1st appellant being minor, in prosecuting the appeal and suit, the grand mother of the minor petitioner has filed the petitions to appoint her as the Guardian/Next friend of the minor petitioner Iyyanar until he attains majority i.e on 09.05.2015, who is solely in her care and custody for all purposes in life as on date and implead him as the legal representative/heir of deceased 1st appellant in the civil miscellaneous appeal. It is further submitted that the petition papers were returned by the office for some compliance on 22.09.2014 and the same was represented on 09.10.2014 and again the petition was returned for certain compliance on 31.10.2014 and the same was also represented on 28.01.2015, hence there is a delay of 91 days due to inadvertence in representing the said application.

5. The learned counsel for the respondent would submit that nothing survives in this Civil Miscellaneous Appeal, since the suit was filed by the respondent for declaration of her title to 'A' schedule property and for recovery of vacant possession of the suit property and for permanent injunction. The respondent herein also filed I.A.No.223/2009 for restraining the appellant herein from alienating the property to any one or creating encumbrance. The respondent also filed I.A.No.224/2009 seeking ad-interim injunction restraining the appellant herein not to construct any superstructure over B schedule property and to stop illegal construction therein pending disposal of the suit. A petition in I.A.No.225/2009 under Order 26 Rule 2 C.P.C., was also filed by the respondent herein before the Court for appointment of an Advocate Commissioner to note down the physical features including the new construction made by the appellant. The lower Court has allowed I.A.Nos.223/2009 and 225/2009 and come to the conclusion that since the Advocate Commissioner has already been appointed, no further order is necessary in I.A.No.224/2009. Against the said order, this Civil Miscellaneous Appeal has been filed.

6. The learned counsel for the respondent would further submit that the said suit in O.S.No.32 of 2009 itself has been decreed in favour of the respondent and possession has also been taken by the respondent herein.

7. In view of the above submission of the learned counsel for the respondent, nothing survives in the Civil Miscellaneous Appeal for further adjudication and accordingly, this Civil Miscellaneous Appeal is dismissed. Since the Civil Miscellaneous Appeal itself is dismissed, the petition in M.P.No.1 of 2015 to condone the delay in representing a petition for setting aside the abatement and the stay petition in M.P.No.1 of 2010 are closed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

AT

To

1.The II Additional District Court,
Puducherry.

C.M.A.No.698 of 2010

RJI (CO)
GN(10/12/2018)

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