



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 31.08.2018
CORAM

THE HONOURABLE MRS. JUSTICE R.THARANI
C.M.P. (MD) .Nos.762 to 764 of 2018
in
S.A. (MD) .No. SR16017 of 2017

S.Muthiah ... Petitioner/Appellant
in all petitions
Vs.

1.S.Ramaiah (died) ... Sole Respondent in S.A.
in all petitions

2.Periyapandi

3.Chinnapandi

4.Alagammal

5.Panchavarnam

6.Petchiyammal

... Respondents/Proposed Respondents
in all petitions

Prayer in C.M.P. (MD) .No.762 of 2018 : Civil Miscellaneous Petition under Section 5 of Limitation Act, to condone the delay of 77 days in filing the petition to set aside the abatement caused by the death of the sole respondent in the said Second Appeal.

Prayer in C.M.P. (MD) .No.763 of 2018 : Civil Miscellaneous Petition is filed under Order 22 Rule 9(2) of C.P.C., to set aside the abatement caused by the death of the sole respondent in the above said Second Appeal.

Prayer in C.M.P. (MD) .No.764 of 2018 : Civil Miscellaneous Petition is filed under Order 22 Rule 4 of C.P.C., to bring the Legal Representatives of the deceased Ramaiah - Sole Respondent as the Proposed Respondents No.2 to 6 in the above Second Appeal.

Prayer in S.A. (MD) .No.16017 of 2017: Second Appeal filed under Section 100 of C.P.C., to call for the records pertaining to the judgment and decree in A.S.No.16/2011 dated 09.08.2016 by the learned Subordinate Judge, Virudhunagar by confirming the judgment decree passed in O.S.No.134/2010 dated 09.04.2011 passed by the learned District Munsif, Virudhunagar and set aside the same.

(In all petitions)

For Petitioner : Mr.K.Kannan

R1 : Died

<https://hcservices.ecourts.gov.in/hcservices/>

For R2 to R5 : Mr.S.Sivakumar

**O R D E R**

These petitions are filed to condone the delay of 77 days in filing the petitions, to set aside the abatement caused by the death of the sole respondent and to bring the Legal Representatives of the deceased/Sole respondent.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the proposed respondents.

3. On the side of the petitioner, it is stated that the Second Appeal is filed against the judgement and decree in A.S.No.16 of 2011 dated 09.08.2016 on the file of the learned Subordinate Judge, Virudhunagar confirming the judgment and decree passed in O.S.No.134 of 2010 dated 09.04.2011 on the file of the learned District Munsif, Virudhunagar.

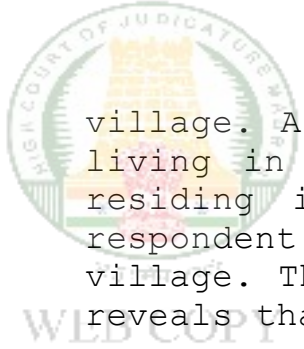
3.1. On the side of the petitioner, it is stated that the petitioner filed the Second Appeal with a delay of 138 days. The petitioner has filed a petition in C.M.P.(MD)No.4461 of 2017 and this Court ordered notice to the first respondent and only thereafter he came to know that the first respondent was dead on 06.06.2017 and this fact came to be known to the petitioner only on 07.12.2017 and that there was a delay of 77 days in filing the petition to implead the LR's of the first respondent.

4. On the side of the respondents, it is stated that the petitioner is the brother of the first respondent and also the petitioner and the first respondent resided in the same village. The reasons stated in the petition, are wrong and there is a concurrent findings in both the Courts below and if the petition is allowed, the respondents would be put into irreparable loss.

5. Records perused.

6. From the records, it is seen that the first respondent died on 06.06.2017. The petition for impleading of the Legal representatives of the deceased has to be filed within 90 days and the abatement petition has to be filed within a period of 60 days. The petitioner has not filed the petitions within specified time. The reasons stated in the petition is that the petitioner was not aware of the death of the first respondent and he came to know the death of the first respondent only on 07.12.2017 and that the petitioner has to gather the particulars of the Legal Representatives and there was a delay.

7. On the side of the respondents, it is stated that the first respondent is the brother of the petitioner. The first respondent and the petitioner belonged to same area and are residing in same



village. A perusal of the petition reveals that the petitioner is living in Kuppampatti Village and the first respondent was also residing in Kuppampatti Village. The petitioner and the first respondent are blood brothers and were residing in the same village. The address of the Legal Representatives (R2 to R6) also reveals that they are also residing in Kuppampatti Village.

8.In the above circumstances, the reasons stated that the petitioner came to know about the death of the first respondent only on 07.12.2017 and the petitioner has to gather the particulars of the Legal Representatives are all false.

9.In the above circumstances, the reasons stated in the affidavit filed in support of this petitions are not satisfactory. Accordingly, the Civil Miscellaneous Petitions are dismissed. Consequently, the S.A.(MD)No.SR16017 of 2017 is rejected at the SR stage itself.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Subordinate Judge,
Virudhunagar.
2. The District Munsif,
Virudhunagar
3. The Section Officer, (2 copies)
ER Section,
Madurai Bench of Madras High Court,
Madurai.

LS

VB/SKN/SAR4/05.10.2018/3P/5C

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in
S.A. (MD) .No. SR16017 of 2017
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