



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Thursday, the Twentieth day of September Two Thousand and Eighteen

PRESENT

WEB COPY

The Hon'ble Mr. Justice C.V.KARTHIKEYAN

CMP(MD) Nos.4001 to 4003 of 2016
IN
SA No.1152 of 2001

D.RAJA SEKAR

... PETITIONER/PROPOSED 4th RESPONDENT

Vs

1 M.VIDYA
2 SANKARA SUBRAMANIAN
3 K.DHARMA ARAJ (DECEASED)
4 MARUTHAYEE
5 DHANAKODI

... RESPONDENTS/ 1 to 3 RESPONDENTS

Prayer in CMP(MD)No.4001 of 2016 :

Civil Miscellaneous Petition filed under Section 5 of the Limitation Act praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 2556 days in filing to set aside the abatement of the deceased 3rd respondent in S.A.No.1152 of 2001 on the file of this Hon'ble Court.

Prayer in CMP(MD)No.4002 of 2016 :

To set aside the order of abatement caused on the death of the 3rd respondent on 26.10.2008 in the above Second Appeal in S.A.No.1152 of 2001 on the file of this Hon'ble Court and thus render justice.

Prayer in CMP(MD)No.4003 of 2016 :

To permit me as legal representative of deceased my fathers property in the above said Second Appeal in S.A.No.1152 of 2001 on the file of this Hon'ble Court and thus render justice.

Prayer in SA No.1152 of 2001:

Second Appeal filed under Section 100 of CPC., against the Judgment and Decree passed by the I Additional Subordinate Judge, Trichirappalli in A.S.No.120/1998 dated 30.11.1998 confirming the Judgment and Decree passed by the I Additional District Munsif, Trichirappalli dated 29.01.1998 in O.S.No.575/1988.

ORDER : These petitions coming on for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.G.GOMATHI SANKAR, Advocate for the petitioner,
<https://hcservices.ecourts.gov.in/hcservices/>



the court made the following order:-

These petitions have been filed to condone the delay of 2556 days in filing a petition to set aside the abatement owing to the death of the third respondent, to set aside the abatement and to bring on record the petitioner herein as legal heir of the deceased third respondent.

2.The third respondent had died and normally the appellant should have taken steps to bring on record the legal heirs of the deceased third respondent. The appellant had not taken any steps.

3.As a matter of fact, the appeal itself can be declared as abated as against the third respondent. That procedure was objected by the legal heir of the deceased third respondent, who has filed these applications to bring himself on record as the proposed fourth respondent.

4.Heard the learned counsel for the appellant.

5.The appellant himself seems to be not interested to prosecute the second appeal. However, since the parties to the litigation have to be given an opportunity, these applications are allowed.

6.The Registry is directed to carry out the necessary amendments in the memorandum of grounds of appeal and record the petitioner herein as the fourth respondent.

7.Call S.A.No.1152 of 2001 for dismissal on 08.10.2018.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar(CS-III)

+ 1 CC TO Mr.G.GOMATHI SANKAR, ADVOCATE IN SR No. 16204

DATED : 20.09.2018

CD PURPOSE

CMP(MD)Nos.4001 to 4003/2016 IN
SA No.1152 of 2001