



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Friday, the Twelfth day of October Two Thousand and Eighteen

PRESENT

WEB COPY

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

CMP(MD) No.9104 of 2016
IN
AS(MD) No.605 of 1996

M.AYYA PILLAI @ NAVANEETHAN

... PETITIONER/5th RESPONDENT

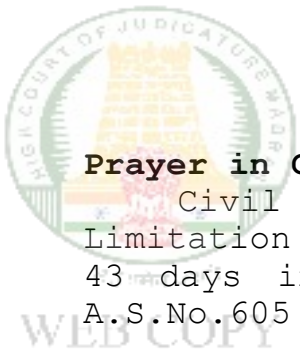
VS

1 MUTHUKRISHNA PILLAI (DIED)
2 M.MURUGESAN
3 SEENIAMMAL (DIED)
4 PARAMARAKKU @ RASAMMAL (DIED)
5 LAKSHMANAN
6 MARIMUTHU PILLAI (DIED)
7 R.PAPPA @ ARUMUGATHAMMAL
8 M.NAGARATHINAM
9 A.PATHRAKALI
10 P.JEYARAM
11 P.PAPPA
12 P.RANJITHAMMAL
13 P.MUTHULAKSHMI
14 P.RAJENDRAN
15 P.MUTHIAH
16 R.ARUMUGA NAYINAR
17 A.RAMALAKSHMI
18 A.REVATHI
19 A.MARAGATHAM
20 A.SANGARESWARI
21 A.RAJA (DIED)
22 AVUDAI PARVATHY
23 RAJESHWARI
24 NAVANEETHA KRISHNAN
25 RAMANTHAN
26 CHELLAMMAL
27 RAMALAKSHMI
28 PARAMASAKTHI
29 MINOR.SUMA
30 MINOR.DHANALAKSHMI

(RR 29 and 30 Ninors Rep. by through their mother
and natural guardian of 28th respondent herein)

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... Respondents 28 to 30/Proposed LR's of
deceased 21st respondent (A.Raja)



Prayer in CMP(MD) .No.9104 of 2016 :

Civil Miscellaneous Petition filed under section 5 of Limitation Act, praying this Hon'ble court, to Condone the delay of 43 days in filing the petition to restore the First Appeal in A.S.No.605 of 1996.

Prayer in AS.No.605 of 1996 :

Appeal Suit is filed under section 96 of the Code of Civil Procedure, against the judgment and decree dated 24.04.1996 made in O.S.No.610 of 1993, on the file of the Additional Subordinate Court, Srivilliputhur.

ORDER: Civil Miscellaneous Petition is coming on for hearing on this day, and upon the perusing the affidavit and petition filed, and upon hearing the arguments of none appeared of the both counsels, this court made the following Order:-

This Civil Miscellaneous Petition has been filed by the fifth respondent in the appeal namely M.Ayya Pillai @ Navaneethan. The appeal had been filed by Muthukrishna Pillai, Father of M.Ayya Pillai @ Navaneethan. Muthukrishna Pillai died and his son who was not a party to the proceedings was brought on record.

2.The said appellant after being has brought on record, informed his counsel that the matter has been settled out of Court and consequently the learned counsel for the appellant Mr.P.Santhoshkumar sought permission to withdraw the appeal and made endorsement to that effect. In view of the settlement and the endorsement made, the appeal was dismissed as withdrawn by order dated 04.07.2016.

3.Subsequently, the fifth respondent has filed the present application seeking to set aside the said order. It is also seen that he has also filed an application to transpose him as an appellant. It is also seen that the same applicant namely M.Ayya Pillai @ Navaneethan had filed another suit in O.S.No.394 of 2004 which is said to be pending before the District Munsif Court, Srivilliputhur with respect to the very same property. To determine whether it is an attempt to re-adjudicate and re-litigate the same issue, this Court had called upon the counsel for the applicant to provide a copy of the plaint in O.S.No.394 of 2004. There has been no representation on behalf of the appellant. The copy of the plaint has also not been provided.

4.In **AIR 1977 SCC 2421 (T.Arivandandam Vs V.Satyapal and another)**, the Honourable Supreme Court was faced a litigation, where a father initiated proceedings after facing an order of eviction and later his son initiated a second proceedings for the same relief. The Honourable Supreme Court has held as follows:

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"2.Here is an audacious application by a determined



engineer of fake litigations asking for special leave to appeal against an order of the High Court on an interlocutory application for injunction. The sharp practice or legal legerdemain of the petitioner, who is the son of the 2nd respondent, stultifies the Court process and makes decree with judicial seals brutum fulmen. The long arm of the law must throttle such litigative caricatures if the confidence and credibility of the community in the judicature is to survive."

5.I hold that this application is a clear attempt to re-litigate the same issue which has been raised in O.S.No.394 of 2004. I find no merit in this application. Hence this Civil Miscellaneous Petition is dismissed as abuse of process of Court. No costs.

Sd/-

Assistant Registrar (AD-I)

/True Copy/

Sub Assistant Registrar (CS-)

TO

THE ADDITIONAL SUBORDINATE JUDGE,
SRIVILLIPUTHUR.

DATED : 12.10.2018

ORDER

CMP(MD) No.9104 of 2016 IN
AS(MD) No.605 of 1996

TE/SV/SAR-1 : 15/11/2018 : 3P/2C