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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

C.R.P(NPD)(MD).Nos.433 and 434 of 2014 and
C.M.P.(MD)No.8449 of 2017 in
C.R.P(NPD)(MD).No.434 of 2014

Kandasamy Pillai .. Petitioner/Petitioner/
Petitioner in both petitions

Vs.

1.Suyambu
2.Padmaraj
3.Balu
4.Ganesan (died)
5.Bhavani
6.Thangappan
7.Kamsan
8.Suresh
9.Thanalakshmi
10.Jeyalakshmi .. Respondents/Respondents/
Respondents in both petitions

Prayer in C.R.P(NPD)(MD).No.433 of 2014: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair order and Decreetal order, dated 18.04.2011 made in I.A.No.26 of 2010 in I.A.No.170 of 2009 in unnumbered A.S.No.-/2011 on the file of the Court of the Subordinate Judge, Valliyoor.

Prayer in C.R.P(NPD)(MD).No.434 of 2014: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair order and Decreetal order, dated 06.03.2012 made in I.A.No.24 of 2010 in I.A.No.170 of 2009 in unnumbered A.S.No.-/2011 on the file of the Court of the Subordinate Judge, Valliyoor.

For Petitioner : Mr.A.Arumugam (in both the petitions)

For Respondents : Mr.V.Meenakshi Sundaram
for R1 to R3 and R5 to R10
in both petitions

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COMMON ORDER

These civil revision petitions are filed against the orders passed by the learned Sub Judge, Valliyoor, dismissing I.A.No.24 of 2010 and I.A.No.26 of 2010 in I.A.No.170 of 2009 in the unnumbered appeal suit pending before the Sub Court, Valliyoor.

2.The brief facts that are necessary for the disposal of the civil revision petitions are as follows:

The revision petitioner is the appellant/plaintiff in the unnumbered appeal suit pending before the Sub Court, Valliyoor preferred as against the judgment and decree of the trial Court in O.S.No.181 of 2004 on the file of Additional District Munsif Court, Nanguneri. It is to be seen that I.A.No.170 of 2009 is filed by the revision petitioner to condone the delay in filing the appeal in time. Thereafter, the fourth defendant in the suit who is the fourth respondent in the appeal died. Hence the revision petitioner filed I.A.No.24 of 2010 in I.A.No.170 of 2009 in the unnumbered first appeal to condone the delay of 296 days in filing the petition to set aside the abatement caused due to the death of the fourth respondent in the unnumbered appeal. The revision petitioner has also filed another application in I.A.No.25 of 2010 to set aside the abatement and I.A.No.26 of 2010 to bring on record some of the legal representatives of the deceased fourth respondent. The lower Court found that the revision petitioner has not impleaded all the legal representatives of the deceased fourth respondent in the appeal. Therefore, dismissed that application. Consequently, the lower court also dismissed the application to condone the delay and the other application to set aside the abatement.

3.Though the revision petitioner filed the civil revision petitions only against the orders in I.A.No.24 of 2010 and I.A.No.26 of 2010 in I.A.No.170 of 2009 in unnumbered appeal suit, having regard to the facts narrated by the petitioner, this Court is of the view that the petition to set aside abatement cannot be dismissed on the ground that all the legal heirs are not impleaded. The petitioner should be given an opportunity to prosecute the appeal on merits in the interest of justice.

4.It is brought to notice of this court that already respondents 5 to 9 herein in this revision petitions have been shown as legal representatives of the deceased fourth respondent. Therefore, there is no necessity to dismiss the application to bring them on record as legal representatives merely on the ground that there are other legal heirs of the deceased fourth respondent. Hence, the order passed by the lower court is erroneous. Hence this Court find that the revision petitioner is entitled to succeed in this petition. The Revision petitioner is directed to implead all the legal heirs of the deceased fourth respondent. Hence, both the revision petitions are allowed and the impugned orders passed in

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I.A.No.24 of 2010 and I.A.No.26 of 2010 in I.A.No.170 of 2009 in unnumbered appeal suit on the file of Sub Court, Valliyoor are set aside. Though, there is no revision petition filed against I.A.No.25 of 2010 in I.A.No.170 of 2009 in unnumbered appeal, the order passed in I.A.No.25 of 2010 also set aside and I.A.No.25 of 2010 stands allowed. No costs.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Valliyoor, Tirunelveli District.

+ 1 CC TO Mr.D.NALLATHAMBI, ADVOCATE IN SR No. 69050
+ 2 CC TO Mr.A.ARUMUGAM, ADVOCATE IN SR Nos. 69060 & 69061

TM
TE/SB/SAR-3 : 05/07/2018 : 3P/5C

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