

C.M.P.Nos.764 to 769 of 2009
in S.A.No.625 of 1998

RESERVED ON : 16.07.2019

PRONOUNCED ON : 16.09.2019

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RMT.TEEKAA RAMAN, J.

Both the appellants in the above second appeal are no more. Since no steps were taken to bring on record the Legal Representatives of the appellants, the above second appeal was dismissed as abated. Thereafter, the petition to set aside the abatement was not filed in time. Hence, C.M.P.No.764 of 2009 has been filed seeking to condone the delay of 3208 days in filing the petition to set aside the abatement caused due to the death of the deceased first appellant in the above second appeal; C.M.P.No.765 of 2009 has been filed to set aside the abatement caused due to the death of the deceased first appellant in the above second appeal and C.M.P.No.766 of 2009 has been filed to bring on record the first petitioner herein as the legal representatives of the deceased first appellant and add him as the third appellant in the above second appeal.

2. C.M.P.No.767 of 2009 has been filed to condone the delay of 1782 days in filing the petition to set aside the abatement caused due to the death of the deceased second appellant in the above second appeal; C.M.P.No.768 of 2009 has been filed to set aside the abatement caused due to the death of the deceased second appellant in the above second appeal and C.M.P.No.769 of 2009 has been filed to bring on record the second petitioner herein as the legal representatives of the deceased second appellant and add him as the fourth appellant in the above second appeal.

3. The first respondent has filed counter statement alleging that the appellants in the above second appeal were encroachers into the properties of the durgah controlled by the second respondent herein and the appellants had put up illegal constructions and had been occupying the buildings illegally with a motive to misappropriate the same. The suit and the appeal were dismissed on concurrent findings. It is further alleged that the legal representatives of the deceased appellants deliberately failed to take steps to get impleaded for the reason that they wanted to squat on the durgah property and

misappropriated the income from the durgah property. They never expected that the durgah to initiate action for removal of encroachments.

4. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the first respondent and perused the records.

5. It is seen from the records that the deceased appellants have filed a suit against the respondents herein and two others in O.S.No.179 of 1979 on the file of the learned Subordinate Judge, Krishnagiri, for declaration that the suit properties belong to Hazarath Syed Sulaiman Shah Khadiri Durgah, Mookandapalli Village and that the Muthavalliship is hereditary one and for permanent injunction restraining the defendants therein from interfering with their administration. The said suit was partly decreed on 16.03.1995 granting a decree for declaration that the properties belong to the said Durgah and in respect of other reliefs, the suit was dismissed. As against the dismissal of the suit, the deceased appellants have filed an appeal before the Additional District Judge, Krishnagiri, in A.S.No.86

of 1996 and the same was dismissed on 12.03.1998. The deceased appellants filed S.A.No.625 of 1998 before this Court against the said judgments and decrees of the Courts below. The first appellant namely, Syed Ameer died on 15.04.2000 and the second appellant namely, Syed Pyarejan died on 11.03.2004.

6. It remains to be stated that no document has been filed showing the alleged date of the death of the appellants and the legal representatives therefor. Furthermore, the second appeal itself was dismissed as abated on 21.04.2006. It is also seen from the docket entries that pending the second appeal, initially an injunction was obtained by the deceased appellants and the same was vacated on 02.02.1999 itself and hence, this Court finds that there is no merit in the averments made by the present petitioners that they are not aware of the proceedings because the injunction restraining the wakf board from vacating the encroachers has already been ordered on 02.02.1999 and the appeal has been dismissed as abated on 21.04.2006 and since the petition to set aside the abatement was not filed in time, C.M.P.No.764 of 2009 has been filed seeking to condone the delay of 3208 days in filing the petition to set aside the abatement

caused due to the death of the deceased first appellant in the above second appeal and C.M.P.No.767 of 2009 has been filed to condone the delay of 1782 days in filing the petition to set aside the abatement caused due to the death of the deceased second appellant in the above second appeal.

7. In the absence of any positive averments regarding the reason for the delay, I am not inclined to accept the contention of the learned counsel appearing for the petitioners. Accordingly, the petitions in C.M.P.Nos.764 and 767 of 2009 filed for condonation of delay are dismissed. Consequently, C.M.P.Nos.765, 766, 768 and 769 of 2009 are also dismissed.

सत्यमेव जयते

16.09.2019

Index : Yes / No

Internet : Yes

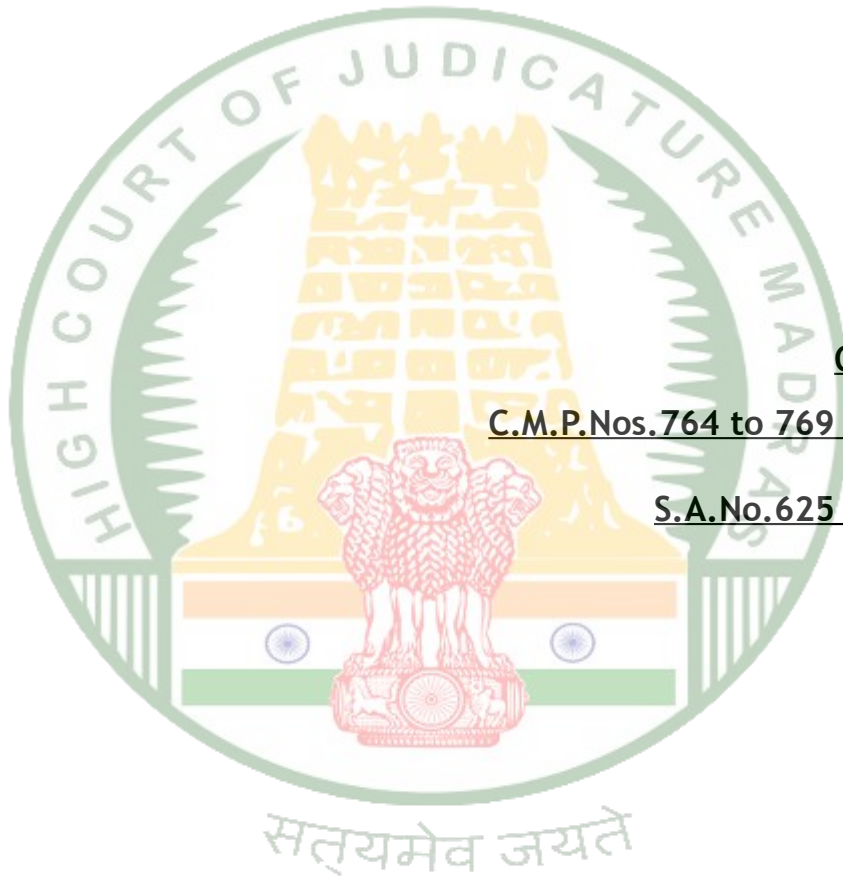
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RMT.TEEKAA RAMAN, J.

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Order in
C.M.P.Nos.764 to 769 of 2009
in
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