

C.M.P.Nos.15179, 15176, 15184 of 2019 in C.M.S.A.No.7 of 2006

T.RAJA, J.

These civil miscellaneous petitions have been taken out to condone the delay of 3424 days in filing the application to bring the legal heirs of the deceased sole appellant, to set aside the abatement caused by his death and to bring on record the legal heirs of the deceased sole appellant respectively, on record in the civil miscellaneous second appeal.

2. Learned counsel for the petitioners submitted that the petitioners are in possession of the property and all the affairs were looked after by the late Rikap Chand. While so, the petitioners were unaware of the pendency of the appeal before this Court. When the matter was listed for hearing, after receiving a communication from the counsel about the listing of the appeal, they came to know about the pendency of the appeal. Since the petitioners are the purchasers of the property in the public auction held on 22.1.2003 and are in possession of the same, they are entitled to be heard in the present appeal. As the delay is neither wilful nor wanton, the same may be condoned, learned counsel for the petitioners pleaded.

3. A counter affidavit has been filed by the respondents. The learned

counsel for the respondents 2,3,6 to 10 & 12 submitted that when the petitioners have not explained such a long delay for setting aside the abatement caused by the death of the sole appellant, the delay should not be condoned. Moreover, the petitioners have not come to this Court with clean hands. Hence, they are not entitled to any indulgence from this Court.

4. But this Court is able to find some merits on the prayer made by the learned counsel for the petitioners for allowing the applications. When the petitioners are the purchasers of the property in public auction held on 22.1.2003, on the date of death of the appellant, namely, Rikap Chand, the petitioners, being the wife, sons and daughter of the deceased, were unaware of the pendency of the matter. Hence, the civil miscellaneous petitions shall stand allowed on payment of costs of Rs.3,000/- by the petitioners to the Tamil Nadu State Legal Services Authority within a week.

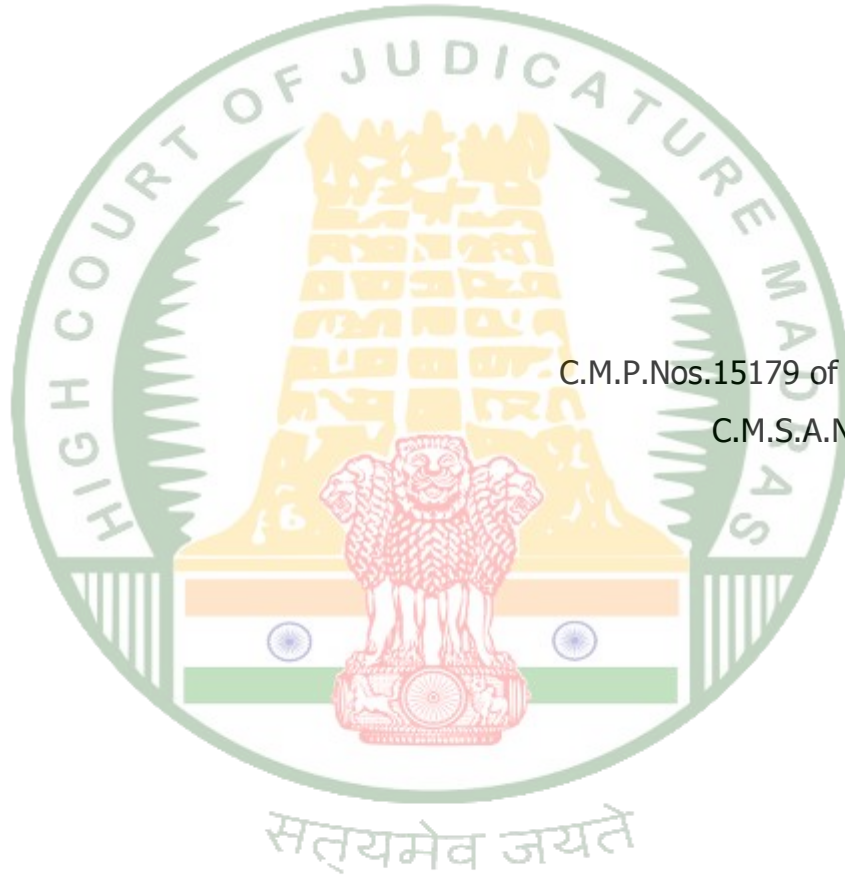
Call the matter on 26.08.2019 for reporting compliance.

14.08.2019

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