



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

C.R.P. (NPD) (MD) No. 657 of 2013

1. Annammal

2. George

3. Victorial

Edward (died)

4. T. Pushpalatha

5. Minor Labin Salini

6. Minor Vibin Salini

(Minor petitioners 5 & 6 are
represented by mother and
natural guardian, 4th petitioner herein)

....Petitioners

-vs-

1. Kamalan

2. Nadankannu

3. Muthumani

4. Sundarraaj

5. Dharmaraj

6. Kumardhas

7. Rosemary

8. Shaji

9. Sheeba

10. Sheela

11. Antony

<https://hcservices.ecourts.gov.in/hcservices/>

12. Amburose



13.Selvam

Therasammal (died)

14.Lawrence

15.Amburose

Therasammal (died)

(No legal heirs of deceased 14th respondent
is recorded as per order in I.A.No.65/2010
dated 29.07.2010)

16.Dharmanian

17.Alexandar

18.Jeyaseelan

19.Packiamuthu

20.Alphonsal

(Addl. Respondents 16 to 20 are
impleaded as LR's of deceased
Therasammal, 17th respondent
as per order in I.A.No.113 of 2010)

.... Respondents

(Cause title accepted vide order dated 22.02.2013
and made in MP(MD)No.1/12 in CRP(MD)NO.SR.42504/12)

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the order and decree dated 21.06.2012 made in I.A.No.145 of 2008 in A.S.No.37 of 2005 on the file of Principal Subordinate Judge, Nagercoil.

For Petitioners	: Mr.H.Thayumanswamy
For Respondents	: Mr.V.Karthikeyan (for R4 to R10)

ORDER

This Civil Revision Petition is filed challenging order dated 21.06.2012 made in I.A.No.145 of 2008 in A.S.No.37 of 2005 on the file of Principal Subordinate Judge, Nagercoil.

2.The civil revision petitioners are the appellants 2, 4 and 5 before the lower appellate Court. During the pendency of the appeal, the appellants 1, 7 and 8 died. Since steps were not taken, the lower appellate Court dismissed the appeal as abated on 11.12.2007. The petitioners filed an application to restore the appeal, however, with delay of 110 days. The said application in I.A.No.145 of 2008 was dismissed only on the reason that there is no reason stated in the petition for the delay of 110 days in filing the petition to restore the appeal.



3.The learned counsel for the petitioners submitted that in the affidavit filed in support of the restoration petition, it is clearly stated that the second respondent was unwell and therefore, the application was filed with delay of 110 days. He further submitted that only the second appellant is prosecuting the matter on behalf of the other appellants. Therefore, he submitted that the finding of the Court below, as if the petitioners have not given any reason for the delay, is factually incorrect.

4.On the other hand, the learned counsel appearing for the respondents submitted that except saying that the second respondent was unwell, he has not produced any material in support of his claim. Therefore, he submitted that the order of the lower appellate Court need not be interfered with.

5.Heard both sides.

6.It is seen that the appeal before the lower appellate Court was dismissed as abated on 11.12.2007, since the appellants fail to take steps as against the death of the appellants 1, 7 and 8. It is seen that an application is filed to restore the appeal, however, with delay of 110 days. In the affidavit filed in support of the said application, it is stated that the second appellant was unwell and therefore, the application was filed belatedly.

7.Considering the above-stated facts and circumstances, this Court is of the view that the finding of the Court below, as if there is no reason stated in the petition for the delay is factually incorrect. Therefore, considering the fact that the delay is only 110 days and that there are other appellants, other than the one, who died, this Court is of the view that the appeal can be restored and the matter may be taken up and decided on merits and in accordance with law.

8.It is represented by the learned counsel for the petitioners that they have already filed a petition to bring on records of the deceased appellants 1, 7 and 8. Therefore, the Civil Revision Petition is allowed and the order of the Court below is set aside. Consequently, the appellate Court is directed to restore the appeal and consider the application filed by the petitioners for bringing the legal heirs of the deceased appellants 1, 7 and 8 and thereafter, to decide the appeal on merits and in accordance with law as expeditiously as possible. No costs.

Sd/-

Assistant Registrar (AE)

/ True Copy /



To

The Principal Subordinate Judge,
Nagercoil.

+1 CC to M/s.H.THAYUMANASWAMY, Advocate (SR-74617[F] dated 10/07/2019)
+1 CC to M/s.V.PERUMAL, Advocate (SR-74798[F] dated 11/07/2019)

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