



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Friday, the Fifteenth day of February Two Thousand Nineteen

PRESENT

The Hon`ble Mrs.Justice T.KRISHNAVALLI

CMP(MD) Nos.878 to 880 of 2018

IN

SA No.2146 of 2003

1 DHAVAMANI (DIED) ... APPELLANT
IN ALL THE PETITIONS

2 RAVICHANDRAN ... PETITIONER/PROPOSED 2nd APPELLANT
(LEGAL HEIR OF DECEASED 1st APPELLANT)
IN ALL THE PETITIONS

Vs

1 M.SOMASUNDARAM
2 SUSEELA ... RESPONDENTS/RESPONDENTS
IN ALL THE PETITIONS

PRAYER in CMP(MD)No.878/2018 in SA No.2146/2003:

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to Condone the delay of 307 days in setting aside the abatement caused due to the death of sole appellant and thus render justice.

PRAYER in CMP(MD)No.879/2018 in SA No.2146/2003:

To set aside the abatement caused due to the death of sole appellant and thus render justice.

PRAYER in CMP(MD)No.880/2018 in SA No.2146/2003:

To bring on record the petitioner as the legal heirs of deceased sole appellant and rank him as 2nd appellant in the above second appeal and thus render justice.

PRAYER in SA No.2146/2003:

To file this memorandum of grounds of second appeal against the decree and judgment of the Additional District Judge cum Fast Track Court I, Thanjavur in A.S.No.93/2002 dated 04.12.2002 confirming the decree and judgment of the District Munsif Court, Thiruvayyaru passed in O.S.No.157 of 1993 dated 24.03.2000.

ORDER: These petitions coming on for orders upon perusing the petitions and the affidavit filed in support thereof and upon hearing the arguments of Mr.V.K.VIJAYARAGAVAN, Advocate for the



petitioner in all the petitions and of MR.R.NANDAKUMAR, Advocate on behalf of the Respondents in all the petitions, the court made the following order:-

These Civil Miscellaneous Petitions have been filed to condone the delay of 307 days to set aside the abatement caused due to the death of the sole appellant, to set aside the order of abatement caused on the death of the sole appellant and to bring on record the legal-heirs of the deceased sole appellant in the main second appeal.

2.Heard both sides and perused the materials available on record.

3.The petitioner states that the deceased sole appellant, while he was in sound disposing state of mind, executed a Will on 09.03.2017 bequeathing the suit property in his favour and after her death, the Will was came into effect and as per the Will, he is the only legal-heir and due to inadvertence, he did not take steps in time and the delay caused is not wanton or willful and hence, the delay caused in setting aside the abatement due to the death of the sole appellant and prays that the petitions may be allowed.

4.On the side of the respondents, it is stated that the defendant failed to produce the copy of the alleged Will and unless the Will is proved in proper forum, the proposed party cannot be impleaded and the petitioner has not explained the reasons for the delay and the reasons stated in the petition are not acceptable and prays that the petitions may be dismissed.

5.The petitioner claims legal-heir on the basis of the Will. In this petition, the petitioner filed the Will executed by the sole appellant. He claimed as legal-heir only on the basis of the above Will. The above Will is valid or not has to be decided only at the time of adjudication of the appeal. The petitioner stated that due to inadvertence, he did not file the petitions in time. The reasons stated in the petitions are acceptable. Hence, in the interest of justice, these petitions are allowed on terms.

6.In the result, these petitions are allowed on payment of **Rs.5,000/- [Rupees Five thousand only]** to the **Chief Justice Relief Fund**, within a period of two weeks from the date of receipt of a copy of this order, failing which these petitions shall stand dismissed automatically without further reference to this court.

sd/-
15/02/2019

/ TRUE COPY /



TO

1. THE ADDITIONAL DISTRICT JUDGE CUM FAST TRACK COURT I,
THANJAVUR.

2. THE DISTRICT MUNSIF COURT, THIRUVAYYARU.

COPY TO : THE SECTION OFFICER, ACCOUNTS SECTION
(CHIEF JUSTICE RELIEF FUND),
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CMP (MD) Nos. 878 **to** 880 of 2018
IN
SA No. 2146 of 2003
Date : 15/02/2019

er
PK/JC/SAR-2/11.03.2019 : 3P/4C