



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

Tuesday, the Fifth day of March Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice S.S.SUNDAR
and
The Hon`ble Mr.Justice C.SARAVANAN

CMP(MD) No.11951 of 2018
AND
CMP(MD) No.736 of 2019
IN
AS(MD) No.SR42209 of 2018

LALITH MEHTA,

... PETITIONER/APPELLANT
IN CMP(MD) No.11951 of 2018

LALITH MEHTA,

... PETITIONER/PETITIONER/APPELLANT
IN CMP(MD) No.736 of 2019

Vs

1 A.R.USHA,
2 A.R.VIGNESH,

A.S.KRISHNAN (DIED)

3 A.K.MOHAN,
4 A.K.CHANDRU,
5 JWALA AMARNATH,
6 A.A.CHITRA,
7 A.A.SHELLA,
8 A.A.NAGARAJAN,
9 A.A.GANGA,
10 A.A.RADIKA,
11 SALAJA VENKATACHALAPATHY,
12 ASHALATHA JEYACHANDRAN,
13 S.SARATH,
14 A.K.PADMINI

... RESPONDENTS/RESPONDENTS
IN CMP(MD) No.11951 of 2018

1 A.R.USHA,
2 A.R.VIGNESH,
3 A.K.MOHAN,
4 A.K.CHANDRU,
5 JWALA AMARNATH,
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9 A.A.GANGA,



10 A.A.RADIKA,
11 SALAJA VENKATACHALAPATHY,
12 ASHALATHA JEYACHANDRAN,
13 S.SARATH,
14 A.K.PADMINI

... RESPONDENTS/RESPONDENTS/RESPONDENTS
IN CMP(MD) No.736 of 2019

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PRAYER IN CMP(MD) No.11951 of 2018

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 353 days in filing this appeal and thus render justice.

PRAYER IN CMP(MD) No.736 of 2019

To order substituted service to the respondents 3,4,11 and 12 by an advertisement in a daily newspaper circulating in the locality of their last known address and thus render justice.

PRAYER IN AS(MD) No.SR42209 of 2018

call for the records set aside the decree and judgment passed in O.S.NO.282/2004 on the file of IV Additional District Court at Madurai dated 17.07.2017 as for as the findings given as against the appellant herein and thus render justice.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.V.K.VIJAYARAGAVAN, Advocate for the petitioner, in both the petitions and of Mr.M.N.SANKARAN, Advocate for R1 & R2, in both the petitions and Mr.T.R.JEYAPALAM, Advocate R5 & R8, in both the petitions, and Mr.B.MURUGAN, Advocate for R9 & R10, in both the petitions the court made the following order:-

(Order of the Court was made by S.S.SUNDAR, J.)

This matter has been listed today under the caption "for being mentioned" and heard through Video Conference.

2.This Court, by order dated 29.01.2019 in C.M.P.(MD) No.11951 of 2018, condoned the delay of 353 days in filing the above appeal with a condition to the petitioner to pay a sum of Rs.5,000/- to the learned counsel for the respondents 1 and 2 within a stipulated time. The said order has been passed under the impression that notice was served on all the respondents.

3.However, it is brought to the notice of this Court that notice to the respondents 3,4,11 and 12 has not been served. The petitioner has also admitted this position as they have filed petition earlier in C.M.P.(MD) No.736 of 2019 to order substitute service to the respondents 3, 4, 11 and 12 by an advertisement in a daily newspaper. That petition is yet to be ordered. Hence, in all fairness, the order condoning the delay has to be recalled as it was passed without service of notice to some of the respondents.



4. However, the learned counsel appearing for the petitioner states that respondents 3,4,11 and 12 have already sold the property in favour of the appellant/petitioner in this application and they have also admitted the sale executed by them in respect of their shares in the property. It is therefore submitted that the respondents on whom notice was not served viz., the respondents 3,4,11 and 12 may not have any interest in the subject matter and that the petitioner claims right only under the sale deeds executed by these respondents in favour of the appellant/petitioner. The counsel appearing for the petitioner also stated that he will give up against the respondents 3,4,11 and 12 in the appeal.

5. Recording the said submission of the learned counsel appearing for the petitioner that they he is giving up the appeal against respondents 3,4,11 and 12 in the appeal, this Court is of the view that the order dated 29.01.2019 condoning the delay need not be recalled. It is further submitted by the learned counsel for the petitioner that condition imposed by this Court while condoning the delay has been complied with.

6. Therefore, this petition is closed as no order is necessary in this petition. The office is directed to number the appeal if it is otherwise in order.

sd/-
05/03/2019

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

THE IV ADDITIONAL DISTRICT JUDGE,
MADURAI

COPY TO:- THE SUB ASSISTANT REGISTRAR,
AE SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CMP (MD) No.11951 of 2018 &
CMP (MD) No. 736 of 2019
IN
AS (MD) No. SR42209 of 2018
Date : 05/03/2019