



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

Friday, the Twentieth day of December Two Thousand Nineteen

PRESENT

The Hon'ble Mr. Justice N.SATHISH KUMAR

CMP(MD) Nos.8029, 8030 and 8032 of 2019
IN
SA(MD) No.658 of 2011

K.MARIAPPAN

... PETITIONER/APELLANT
IN ALL THE PETITIONS

Vs

1 K.GANESAN (DIED)

2 UMADEVI

3 G.MURUGESAN

4 SAPITHA

... RESPONDENTS 1 TO 3/LRs OF DECEASED
SOLE RESPONDENT/PROPOSED RESPONDENTS 2 TO 4
IN ALL THE PETITIONS

Prayer in CMP(MD)No.8029 of 2019 :

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 772 days in filing the petition to bring on record the legal representatives of the deceased sole respondent in SA.658 of 2011.

Prayer in CMP(MD)No.8030 of 2019 :

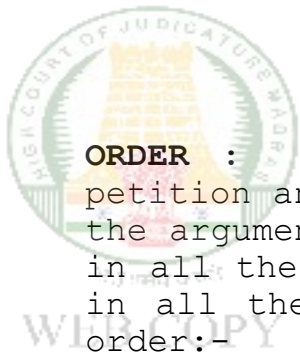
To Set Aside the abatement caused due to the death of the deceased sole respondent in SA.No.658 of 2011

Prayer in CMP(MD)No.8032 of 2019 :

To Bring on record the respondents No.2 to 4 herein as legal representatives of the deceased sole respondent and rank them as respondents No. 2 to 4 in SA.No.658 of 2011

Prayer in SA(MD) No.658 of 2011:

Second Appeal against the Judgment and decree dated 09.04.2010 made in A.S.No.8/2007 on the file of the 3rd Additional Subordinate Court, Madurai confirming the Judgment and decree dated 08.11.2006 made in O.S.No.502/2005 on the file of the Additional District Munsif Court, Madurai.



ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/r.PT.S.NARENDRAVASAN, Advocate for the petitioner in all the petitions and of Mr.D.NALLATHAMBI, Advocate for R2 to R4 in all the petitions and (R1 died), the court made the following order:-

These applications are filed (i) to condone the delay of 772 days in filing the petition to bring on record the legal representatives of the deceased sole respondent; (ii) to set aside the abatement caused due to the death of the sole respondent; (iii) to bring the legal heirs of the sole respondent on record as respondents 2 to 4.

2.The sole respondent is none other than the brother of the plaintiff / petitioner herein, whereas, the affidavit indicates as if the death of the sole respondent came to be known to the petitioner recently. Such fact *prima facie* is not believable. However, taking note of the fact that normally, the affidavit is only prepared by the learned counsel and signature is obtained from the parties. Merely because the false statement made in the affidavit, substantial right cannot be defeated, if the affidavit is drafted by the learned counsel. In order to give fair opportunity to the parties, particularly, legal heirs, to agitate their rights, the delay is condoned, subject to the payment of Rs.1500/- (Rupees Thousand Five Hundred Only) payable to Women Lawyers Association, attached to this Bench for the purpose of maintaining the Creche maintained by them. The cost shall be paid on or before 20.01.2020

3.In view of the same, these petitions are ordered. The Registry is directed to carry out the necessary amendment and post the appeal on 21.01.2020.

sd/-
20/12/2019

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/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE III ADDITIONAL SUBORDINATE JUDGE, MADURAI.
2. THE ADDITIONAL DISTRICT MUNSIF, MADURAI.



COPY TO:-

THE OFFICER IN-CHARGE,
WOMEN LAWYERS ASSOCIATION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
(FOR THE PURPOSE OF MAINTAINING THE CRECHE)

ORDER IN
CMP(MD) Nos.8029, 8030 and
8032/2019
IN
SA(MD) No.658 of 2011
Date :20/12/2019

MYR
TE/JC/SAR-IV : 10/01/2020 : 3P/4C