



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Civil Appellate Jurisdiction

Friday, the Eighth day of November Two Thousand and Nineteen

PRESENT

The Hon'ble Mrs. Justice J. NISHA BANU

CMP(MD). No.8702 of 2019

in

SA No.1762 of 1999

WEB COPY

1. Durairaj

2. B. Nagammal

3. Ashok Babu

... Petitioners/Appellants

Vs

Rajathi Ammal Alias Veerammal

... Respondent/Respondent

Prayer :- This Petition is filed under Order 41 Rule 19 of CPC to reverse and set aside the order of dismissal for default of the above second appeal dated 20.08.2019 and thereby restore the appeal to file enabling to contest the appeal on merits and thus render justice.

Prayer in SA. 1762 of 1999 : This Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree in A.S.No.100/97 dated 22.07.99 on the file of the Principal Sub Court, Tenkasi in reversing the well considered Judgment and Decree in O.S.No.126/94 dated 24.07.97 on the file of the District Munsif Senkottai.

ORDER:- This Petition coming upon for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.V.Raghavachari, Advocate for the Petitioners, this Court made the following order:

This petition has been filed by the petitioners seeking to set aside the dismissal order dated 20.08.2019 and restore S.A.No.1762 of 1999, which was dismissed for default on 20.08.2019.

2. The learned counsel for the petitioners would submit that on 29.07.2019, this Court directed the petitioners to serve notice to the sole respondent through substituted service by effecting paper publication in Dinamalar, by duly indicating the date of next hearing as 20.08.2019 and accordingly, the petitioners effected paper publication in Chennai edition of Dinamalar newspaper on 15.08.2019, but the paper publication agent did not serve the copy of Dinamalar newspaper, dated 15.08.2019, and therefore, the petitioners were not in a position to produce the same on 20.08.2019, due to which, the second appeal was dismissed for default. Thus, he prayed to restore the second appeal.



3.It is seen that the petitioners effected paper publication in Chennai edition of Dinamalar newspaper on 15.08.2019 and they have also produced a copy of Dinamalar newspaper, dated 15.08.2019, alongwith the petition. Due to non-production of copy of paper publication, the second appeal was dismissed for default, 20.08.2019.

4.Considering the reasons stated in the affidavit filed in support of the petition and also considering that the petitioners have complied with the order dated 29.07.2019 within the time stipulated by this Court, the dismissal order dated 20.08.2019 passed in S.A.No.1762 of 1999 is set aside and S.A.No.1762 of 1999 is restored to file.

5.This petition is ordered accordingly.

6.Registry is directed to post S.A.No.1762 of 1999 for hearing on 22.11.2019.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

TO

1. The Principal Sub Judge, Tenkasi

2. The District Munsif Senkottai.

Copy to:

The Section Officer,
Judicial Section,
Madurai Bench of Madras High Court, Madurai

ORDER DATED : 08/11/2019

=====

ORDER

=====

CMP(MD) . No.8702 of 2019

in

SA No.1762 of 1999

Giving direction and etc.
as stated within.

VB(15.11.2019) 2P 4C

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