

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.142 of 2002

AND

CMP Nos.8882, 8884 to 8888 of 2020

Chennammal .. Appellant /Appellant/Plaintiff
/versus/

Manicka Konar .. Respondent/Respondent/Defendant

Prayer: Second Appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 7.9.2001 made in A.S.No.123 of 2000 on the file of the learned Additional District Judge, Tiruvannamalai, confirming the judgment and decree dated 14.08.2000 in O.S.No.730 of 1996 on the file of the learned District Munsif, Chengam.

For Appellant :Ms.P.Veena Suresh

J U D G M E N T

(The case has been heard through Video Conferencing)

These six miscellaneous petitions are filed to bring the L.Rs. of the deceased sole plaintiff and sole defendant on record. Since the application filed after abatement, leave to condone delay and set aside abatement prayed.

2.No counter filed by the proposed respondents for the legal representatives of the deceased sole respondent.

3.One Chennammal, based on the sale deed dated 10.04.1989 executed by one Kannu Konar in respect of suit schedule property measuring 60 cents, filed suit for declaration and permanent injunction against one Manicka Konar. She lost the suit before the trial Court as well as before the First Appellate Court. Aggrieved against the same, the present second appeal filed by her against Manicka Konar, the sole defendant.

4. Pending appeal, the said Manicka Konar died on 11.01.2005, leaving behind his daughter M.Vijaya and son M.Ramalingam. The said Chennamma had not taken any steps to set aside abatement caused and to bring the said legal

representatives of the deceased sole respondent/sole defendant on record till her life time. She died on 28.12.2017, leaving behind S.Palani, her son, the sole legal representative.

5. After the delay of 668 days, the said Palani has taken out application to set aside abatement caused due to the death of the sole appellant and to bring him on record. Simultaneously, he has taken out applications to condone delay of 5399 days to set aside the abatement caused due to the death of the sole respondent Manicka Konar.

6. Normally, this Court used to condone the delay in filing applications to set aside abatement caused due to the death of the parties pending appeal. But in this case, the enormous delay of 5399 days in filing applications to set aside the abatement caused due to the death of the sole respondent during the life time of the sole appellant not duly explained. Even after the death of the sole appellant, the L.Rs. of the appellant were not vigilant to enter into the shoes of the appellant and bring the legal heirs of the deceased sole respondent within a reasonable time.

7. It is a clear case that the appellant as well as her legal representative, who is the petitioner herein, has slept over the matter for more than 5399 days. The impugned judgment before the Second Appeal threw light about the conduct of the appellant, which this Court unable to resist referring to.

8. This Second Appeal is a second round of litigation. The earlier litigation culminated in S.A.No.2330 of 1977 dated 25.09.1981. In the previous round of litigation, High Court has held that Kannu Kone, who is the father of Manicka Konar (deceased first respondent in this second appeal) is entitled only for 1/4th share in the entire 1.13 acres of the suit land. He failed in his suit for declaration of title and consequently injunction over 0.24.5 hectares (about 60 cents). The alleged alienation of 60 cents to the appellant on 10.04.1989 through Ex.A3, Sale Deed executed after the verdict passed in S.A.No.2330 of 1977 is done with malafide motive and ulterior object to deny the fruits of the decree passed in the earlier round of litigation.

9. In the light of the above fact, the conduct of the appellant to keep the litigation pending inspite of being abated long back does not go in tune with the spirit of justice. Hence, the delay in filing the abatement applications does not carry any meritorious reason to condone.

10. Accordingly, C.M.P.Nos. 8882 of 2020 and 8886 of 2020 filed to condone the delay to set aside the abatement caused due to the death of the sole appellant and the sole

respondent are dismissed. Consequently, the other C.M.Ps are also dismissed.

11.In the result, the Second Appeal No.142 of 2002 is dismissed as abated. No order as to costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

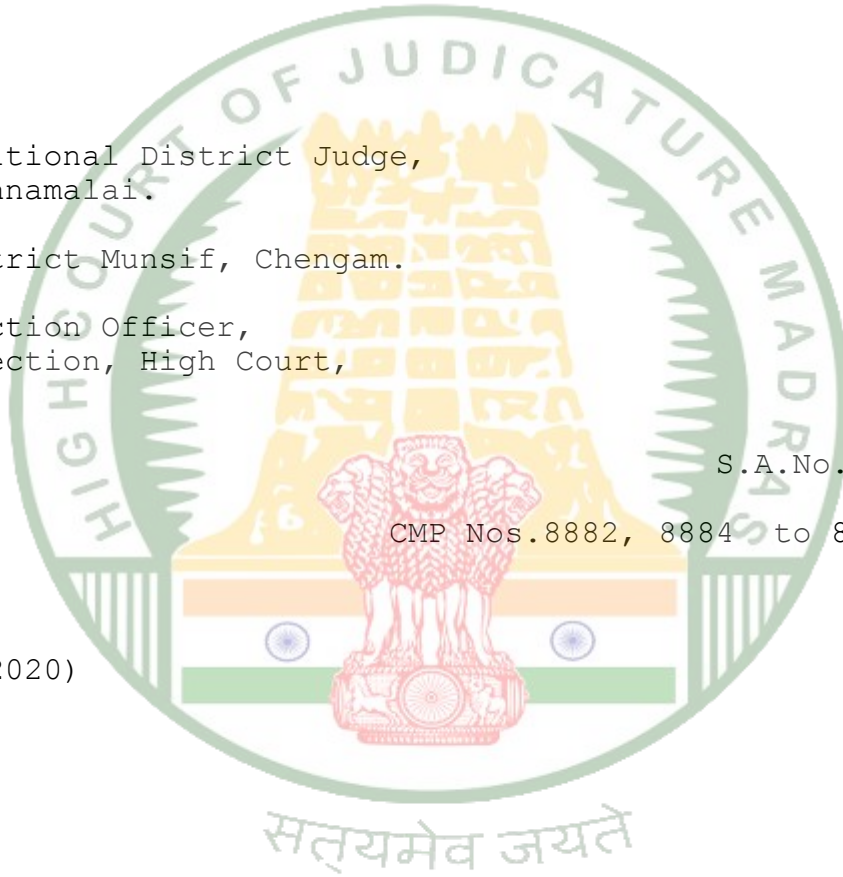
Vri

To:

- 1.The Additional District Judge,
Tiruvannamalai.
- 2.The District Munsif, Chengam.
3. The Section Officer,
V.R. Section, High Court,
Madras.

S.A.No.142 of 2002
and
CMP Nos.8882, 8884 to 8888 of 2020

BR(CO)
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