

C.M.P.No.10795 of 2020
in
S.A.No.531 of 1991

Dr.G.JAYACHANDRAN,J.

(The case has been heard through video conference)

The Civil Miscellaneous Petition is filed by the petitioners/appellants to withdraw the following civil miscellaneous petitions, with liberty to file fresh and proper applications to bring the legal heirs of the deceased respondents 1, 2, 5 and 8:

<i>The following petitions were taken out for the death of the 1st respondent</i>	
CMP.No.10084/2020	To Condone delay of 6550 days under Sec.5 Limitation Act
CMP.No.10086/2020	To set aside abatement Or 22 R 9
CMP.No.10089/2020	To bring on record Or 22 R 4
<i>The following petitions were taken out for the death of the 2nd Respondent</i>	
CMP.No.10091/2020	To Condone delay of 3854 days under Sec.5 Limitation Act
CMP.No.10087/2020	To set aside abatement Or 22 R 9
CMP.No.10090/2020	To bring on record Or 22 R 4
<i>The following petitions were taken out for the death of the 5th Respondent</i>	
CMP.No.9987/2020	To Condone delay of 5589 days under Sec.5 Limitation Act
CMP.No.9990/2020	To set aside abatement Or 22 R 9
CMP.No.9992/2020	To bring on record Or 22 R 4
<i>The following petitions were taken out for the death of the 8th Respondent</i>	
CMP.No.9984/2020	To Condone delay of 9292 days under Sec.5 Limitation Act
CMP.No.9991/2020	To set aside abatement Or 22 R 9
CMP.No.9985/2020	To bring on record Or 22 R 4

2. The suit in O.S.No.784 of 1982 filed for declaration and injunction by private parties against the State was dismissed on 31.01.1995. Against which, the private parties preferred an appeal in A.S.No.140 of 1995 and the same was allowed on 07.01.1997. Having lost the suit, the State preferred the second appeal in S.A.No.531 of 1997 assailing judgment and decree of the lower appellate Court.

3. Pending second appeal, the 1st respondent died on 07.02.2001. According to the learned Government Advocate and the affidavit filed in support of the petition, the death of 1st respondent was informed by the appellant's counsel vide, Memo dated 19.01.2004 listing out the legal representatives of the deceased 1st respondent. The appellant has not taken steps to bring the legal representatives of the 1st respondent on record, despite being informed about the death of 1st respondent. Hence the second appeal was dismissed as abated vide order dated 28.01.2015. Thereafter the private parties have filed a writ petition W.P.No.1637 of 2016 for grant of patta and the same was disposed on 06.02.2017. Against which, a Writ Appeal W.A.No.524 of 2017. Thereafter, recently the State has filed petitions to restore the Second Appeal with condone delay to bring the legal representatives of the deceased 1st

respondent on record. By this time, four of the legal representatives of the 1st respondent and 2nd, 5th and 8th respondents also died.

4. In the said circumstances, when writ appeal was taken up for hearing, the Division Bench of this Court directed this Court to take up the matter and dispose it within a time frame.

5. On 20.08.2020, this Court condoned the delay in filing the restoration petition in C.M.P.No.8110 of 2020 and subsequently restored the second appeal on file vide, order dated 09.09.2020 in C.M.P.No.9047 of 2020. Thereafter it was represented by the learned Government Advocate that in view of the demise of the legal representatives of the deceased 1st respondent and few other respondents ranking of the parties have to be changed and therefore, he sought leave to withdraw the C.M.P.Nos.10084, 10086, 10089, 10091, 10087, 10090, 9987, 9990, 9992, 9984, 9991 and 9995 of 2020 with liberty to file fresh and proper petitions to bring legal representatives of the deceased respondents 1, 2, 5 & 8 and filed this application is to that effect. Notice was served to the learned counsels appearing for the contesting respondents.

6. Mr.V.Raghavachari, learned counsel appearing for the respondents 4 and 6 would submit that the delay in filing the petitions to bring the legal representatives on record and allowing the suit to get abated was purely due to default of the appellants. However, without any compunction in the affidavit sworn by a responsible Officer of the appellant had averred as if respondents belatedly to protract the proceedings not informed the death of the respondent in time. Taking strong exception to the said allegations, the learned counsel would submit that for the said misleading representation, the petition has to be dismissed.

7. On perusing the affidavit filed in support of the petition C.M.P.No.10795 of 2020, this Court substantially agree with the learned counsel for the respondents 4 and 6 in so far the averments made in last part of paragraph 4 in the affidavit. Admittedly, the death of the 1st respondent was informed to the appellants vide memo dated 19.01.2004 while so, a very casual statement made by the Tahsildar, Krishnagiri in his sworn affidavit that he has conducted a detailed enquiry to collect the particulars of the legal representatives of the deceased 1st respondent and he found that the 2nd respondent died on 27.04.2008 and therefore, it has taken nearly 16 years for

him to find out the details of the legal representatives of the deceased 1st respondent.

8. In these 16 years as ordain of nature some of audience some of the existing respondents and legal representatives of the deceased 1st respondent have died. With incomplete particulars, C.M.P.Nos.10084, 10086, 10089, 10091, 10087, 10090, 9987, 9990, 9992, 9984, 9991 and 9995 of 2020 were filed.

9. This Court finds that the casual manner in which the State has dealt the suit, which involves property worth several crores, is deplorable. Shifting blame on the respondents, though they have informed the demise of the 1st respondent dated 19.01.2004 is more condemnable.

10. All said and done, the Appeal is preferred by the State against the reversing judgment. After lapse of 5 years, they woke up from slumber and filed petitions to restore the second appeal on file, which this Court has considered and allowed, in order to decide the second appeal on merits since the dispute is with respect to valuable property worth several crores. With the same intention and spirit, this petition seeking leave to withdraw the earlier

C.M.Ps and to file fresh and proper petitions bringing legal representatives of the deceased respondents 1, 2, 5 & 8 is allowed with costs.

11. The petitioner/appellant is directed to pay cost of Rs.2,00,000/- (Rupees Two Lakhs only), to be deposited in the credit of the Chief Justice Relief Fund (payable in Accounts Section of the High Court Registry), within a period of 15 days from today. The learned Government Advocate is permitted to withdraw the civil miscellaneous petitions with liberty to file fresh petitions to implead all and proper LR's of the deceased respondents.

12. In view of the above order passed in C.M.P.No.10795 of 2020, the petitions in C.M.P.Nos.10084, 10086, 10089, 10091, 10087, 10090, 9987, 9990, 9992, 9984, 9991 and 9995 of 2020 are dismissed as withdrawn.

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29.09.2020

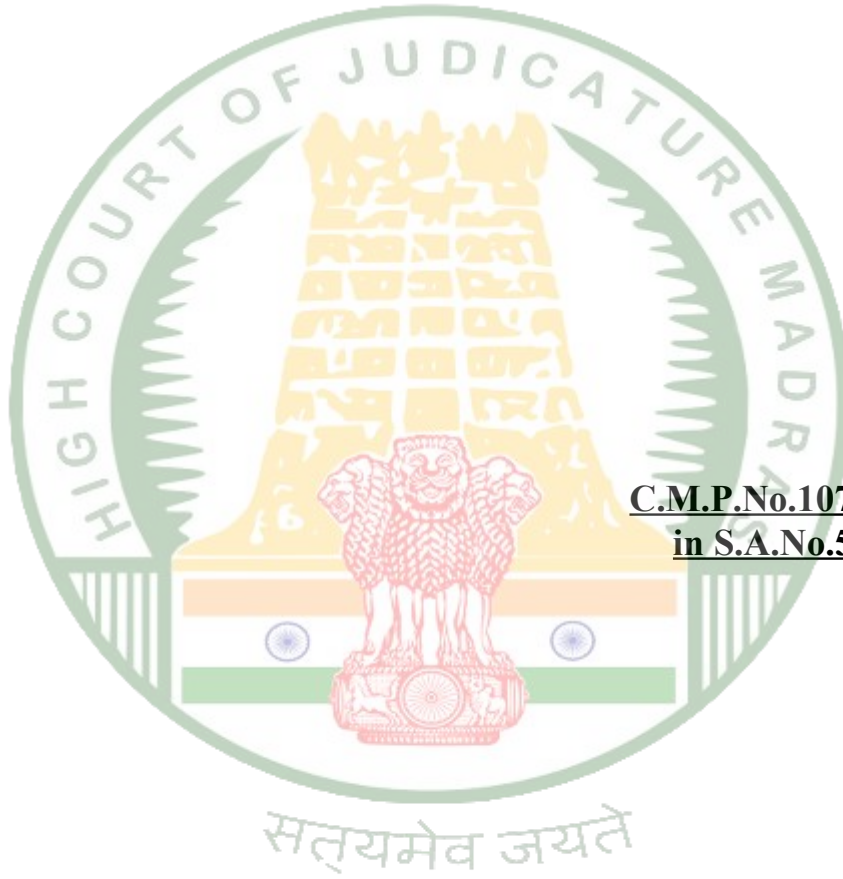
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