



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

Monday, the Twenty First day of December Two Thousand and Twenty
PRESENT

The Hon'ble Mr. Justice M. GOVINDARAJ
CMP(MD). Nos.8682 to 8684 and 8686 of 2019
in
S.A.No.2061 of 2001

WEB COPY

Mohamed Ibrahim (Died)

- 1 M.Alima Biwi
- 2 M.Sahul Hammed
- 3 M.Kamarunnissa

...Petitioners/Appellants in all cases

Vs

Thuvarnkurichi Muslim Public, Rep.By Mohammed Ali,

...Respondent/Respondent in all cases

Prayer in CMP(MD).No.8682 of 2019:-

Civil Miscellaneous Petition is filed under order 41 Rule 19 of Civil Procedure Code, praying this Hon'ble Court to set aside the order and restore the SA(MD)No.2061 of 2001 which was dismissed on 05.08.2019 for default.

Prayer in CMP(MD).No.8683 of 2019 :

Civil Miscellaneous Petition is filed under section 5 of Limitation Act, praying this Hon'ble Court to condone the delay of 6647 days in filing the petition to set aside the abatement of the appeal caused due to the death of the sole appellant.

Prayer in CMP(MD).No.8684 of 2019 :

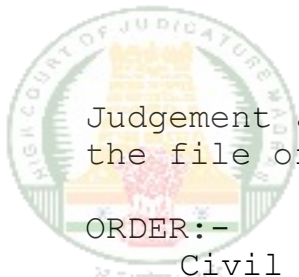
Civil Miscellaneous Petition is filed under order 22 Rule 9(2) of Civil Procedure Code, praying this Hon'ble Court to set aside the abatement of the appeal caused due to the death of the sole appellant.

Prayer in CMP(MD). 8686/ 2019 :

Civil Miscellaneous Petition is filed under order 22 Rule 3 of Civil Procedure Code, praying this Hon'ble Court to bring on record the proposed appellants 1 to 3 legal heirs of the deceased sole appellant and rank them as 1st to 3rd appellants in the appeal.

Prayer in SA. 2061 of 2001 :

Second Appeal is filed under section 100 of Civil Procedure code, praying this Hon'ble Court to set-aside the Judgement and decree dated 17/04/2000 made in A.S.No.444 of 1999 on the file of Subordinate Judge, Tiruchirappalli, reversing the



Judgement and decree dated 29/07/1997 made in O.S.No.404 of 1992 on the file of the District Munsif, Manapparai.

ORDER:-

Civil Miscellaneous Petitions coming on for hearing on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/s. AL.Gandhimathi, Advocate for the Petitioner (in all cases) and of Mr.K.Govindarajan, Advocate For M/s.Sarvabhauman Associates, Advocate for the respondent (in all cases), this Court made the following order:

CMP(MD).No.8682 of 2019 is filed to set aside the order and restore the above Second Appeal, which was dismissed for default on 05.08.2020 along with the applications to condone the delay of 6647 days in filing a petition to set aside the abatement caused due to the death of the sole appellant and to set aside the abatement and to bring on record the LRs of the deceased sole appellant.

2. On perusal of the facts, it is noted that the sole appellant died in the year 2001. Despite, they have the knowledge of the same in the year 2001 itself, the petitioners have not filed any application to set aside the abatement caused due to the death of the sole appellant. Only, when the appeal was dismissed for default on 05.08.2019, they have come out with the petition to restore the Second Appeal along with the above said petitions.

3. There is a delay of 18 years in filing these petitions. It is well-settled that the litigant should be diligent in following up the matter. But, in this case, the conduct of the petitioners show that they were not diligent enough and they are very lethargic and therefore, the person who has slept over his right, is not entitled to any benefit and accordingly, the petition to set aside the abatement as well as the petition to restore the above Second Appeal are dismissed and consequently, the connected Miscellaneous petitions are also dismissed, as the appellant died in the year 2001 itself.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To

1 The Principal Subordinate Judge, Tiruchirappalli

2 The District Munsif, Manapparai.

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ORDER DATED : 21/12/2020

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ORDER

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CMP(MD). Nos.8682 to
8684 of 2019

in

S.A.No.2061 of 2001

Giving direction and etc.
as stated within.

NS (CO)

NR (04/01/2020) 3P : 3C