



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Civil Appellate Jurisdiction)

Tuesday, the Eighth day of December Two Thousand and Twenty

PRESENT

The Hon'ble Mr.Justice R.MAHADEVAN

CMP(MD) . No.3676 of 2016

in

S.A(MD) .No.SR23272 of 2010

1. A.Sikkandar

2. A.Abbas Manthiri (Died)

3. A.Akkeem

4. A.Rajabnisha

5. A.Fathima

6. A.Ansariya (Minor)

(R6 Minor Rep by Her Mother/guardian & Next Friend 4th Petitioner herein)

Petitioners/Petitioner/Petitioners 1 to 3 & Proposed
Petitioners 4 to 6/Appellants 1 to 3 &

Proposed Appellants 4 to 6

Vs

1 M.Basheer Mohamed

2 Saleem

3 Abbas

4 Abdul Subhahani (Died)

5 Fathima Beevi

6 Jiyaudeen

7 Sirajudeen

8 Samsudeen

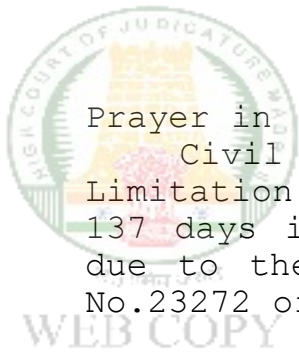
9 Khajamydeen

10 Sherfudeen

...Respondents/Respondents/Respondents/Respondents

Prayer in CMP(MD) . No.3676 of 2016 :-

Civil Miscellaneous Petition is filed under Order IV Rule 9(4) of Civil Procedure Code, praying this Hon'ble Court to condone the delay of 137 days in re-presenting the Miscellaneous Petitions in M.P.(MD)SR.No.37506, 37507 and 37508 of 2015 in S.A.(MD)SR.No.23272 of 2010.



Prayer in M.P.(MD)SR.No.37506 of 2015 :

Civil Miscellaneous Petition is filed under section 5 of the Limitation Act, praying this Hon'ble Court to condone the delay of 137 days in filing the petition to set aside the abatement caused due to the deceased of 2nd Petitioner/2nd Appellant in S.A.SR(MD).No.23272 of 2010.

Prayer in M.P.(MD)SR.No.37507 of 2015 :

Civil Miscellaneous Petition is filed under Order 22 Rule 9 of Civil Procedure Code, praying this Hon'ble Court to set aside the abatement caused in respect of deceased of 2nd Petitioner/2nd Appellant in S.A.SR(MD).No.23272 of 2010.

Prayer in M.P.(MD)SR.No.37508 of 2015 :

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 petitioners 4 to 6 are the legal representatives of the deceased of 2nd Petitioner/2nd Appellant in S.A.SR(MD).No.23272 of 2010.

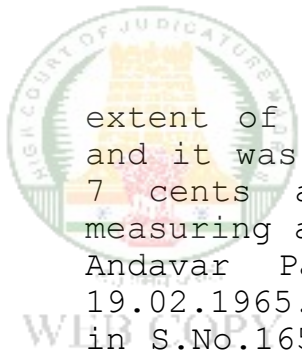
Prayer in S.A(MD).No.SR23272 of 2010 :

Second Appeal is filed under section 100 of Civil Procedure Code, praying this Hon'ble Court to set aside the judgment and decree dated 14.12.2019 made in A.S.No.100 of 2008 on the file of the Sub Court, Theni, confirming the judgment and decree dated 16.07.2007 made in O.S.No.339 of 2006 on the file of the District Munsif Court, Theni.

ORDER:- Civil Miscellaneous Petition is 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 Mr.A.Arumugam, Advocate for the Petitioner and of Mr.T.Lajapathi Roy, Advocate for the respondent, this Court made the following order:

The petitioners/plaintiffs filed a suit in O.S.No.339 of 2006 on the file of the learned District Munsif, Periyakulam, seeking for permanent injunction restraining the respondents/defendants, their men and agents from interfering with their peaceful possession and enjoyment of the suit schedule property and the said suit was dismissed vide judgment and decree dated 16.07.2007. Aggrieved over the same, the petitioners/plaintiffs filed A.S.No.100 of 2008 on the file of the learned Subordinate Judge, Theni. The first appellate Court, vide judgment and decree dated 14.12.2009, dismissed the appeal suit and confirmed the judgment and decree passed by the trial Court and hence, the Second Appeal has been preferred with a delay of 137 days and in order to condone the said delay, the present petition has been filed.

2. The learned counsel appearing for the petitioners/plaintiffs
<https://hcn.sirsi.courts.gov.in/services/> the petitioners belong to one family. The total



extent of the suit scheduled property in S.No.1655/19 is 12 cents and it was subdivided into 1655/19A and 1655/19B, with an extent of 7 cents and 5 cents respectively. The land in S.No.1655/9B, measuring an extent of 5 cents was transferred in favour of Mohideen Andavar Pallivasal by way of a registered gift deed dated 19.02.1965. It is also stated that on 06.06.1951, two cents of land in S.No.1655/9A was transferred by way of a registered sale deed to one C.Basha Rawther and the remaining 5 cents of land in S.No.1655/9A remain in possession and enjoyment of the petitioners/plaintiffs. The Courts below, without considering the same, dismissed the suit.

3. The learned counsel appearing for the respondents/defendants denied the averments of the petitioners/plaintiffs and would submit that with respect to the property in dispute, appeal suit in A.S.No.83 of 2000 had already been filed and it is still pending on the file of the learned Subordinate Judge, Periyakulam and the same was suppressed by the petitioners/plaintiffs. Hence, he prays for dismissal of the second appeal.

4. Heard the learned counsel appearing for the petitioners/plaintiffs and the learned counsel appearing for the respondents/defendants and perused the materials placed before this Court.

5. Since the dispute is with regard to the physical features of the land, this Court finds it appropriate to appoint an Advocate Commissioner so as to inspect the said land and file a report before this Court for passing further orders.

6. Accordingly, **Mr.A.Mohamed Haneef, Advocate, Kasim Residency, Plot No.1, Door No.5/140, Opposite High Court, Y.Othakdai, Madurai - 107 (Cell No.9842494977)** is appointed as an Advocate Commissioner to visit and find out the physical features of the land in dispute.

7. The Advocate Commissioner shall inspect the land in dispute with the assistance of the local Surveyor and the Village Administrative Officer, after issuing notice to all the parties and their respective counsel by fixing the date and time of inspection of the suit property on or before 15.12.2020. The Advocate Commissioner shall be paid a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only), towards his remuneration, by the petitioners/plaintiffs. Apart from that, the the petitioners/plaintiffs shall also arrange for the conveyance and other incidental expenses.

8. The Advocate Commissioner, after noting down the physical features of the suit property, shall file his report along with a sketch before this Court on or before 15.12.2020.



9. Post the matter on **17.12.2020**.

Sd/-

Assistant Registrar (CO)

// True Copy //

WEB COPY

/ /2020

Sub Assistant Registrar(CS)

Note:- In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned

To

1 The Sub Judge, Theni.

2 The District Munsif, Theni.

3 **Mr.A.Mohamed Haneef, Advocate, Kasim Residency,
Plot No.1, Door No.5/140, Opposite High Court,**

Y.Othakdai, Madurai - 107 (Cell No.9842494977) (3 Copies)

**(the Advocate Commissioner shall serve the copy of this order to the
Surveyor and the Village Administrative Officer for compliance)**

Copy to

**The Section Officer, Judicial Magistrate,
Madurai Bench of Madras High Court, Madurai.
(To List the matter on 17/12/2020)**

ORDER DATED : 08/12/2020

HEARING DATE : 17/12/2020

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ORDER

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CMP(MD). No.3676 of 2016
in
S.A(MD).No.SR23272 of 2010

Giving direction and etc.
as stated within.