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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.Nos.521 to 523 of 2008

and

C.M.P.Nos.8416 to 8421
and 8429 to 8431 of 2021

S.A.No.521 of 2008:

Mari Naicker ...Plaintiff/Appellant/Appellant

Vs.

1.Elumali Naicker

2.Kesavan

3.Jaisankar

...Defendants/Respondents/Respondents

C.M.P.Nos.8429 to 8431 of 2021:

1.Mari Naicker (deceased)

... Appellant

2.Sekar

3.Ramesh

...Petitioners/Proposed Appellants 2 & 3

Vs.

1.Elumali Naicker

2.Kesavan

3.Jaisankar

...Respondents/Respondents

S.A.No.522 of 2008:

Chockkalingam Naicker

...Plaintiff/Appellant/Appellant

Vs.

1.Elumali Naicker

2.Kesavan

3.Jaisankar

...Defendants/Respondents/Respondents

C.M.P.Nos.8417, 8418 and 8421 of 2021:

1.Chockkalingam Naicker (deceased)

... Appellant

2.Shankar

3.Pandurangan

4.Kumari @ Gowri

5.Shanthi



6.Devaki

...Petitioners/Proposed Appellants 2 to 6

Vs.

1.Elumali Naicker

2.Kesavan

3.Jaisankar

...Respondents/Respondents

S.A.No.523 of 2008:

Kanniammal

...Plaintiff/Appellant/Appellant

Vs.

1.Elumali Naicker

2.Kesavan

3.Jaisankar

...Defendants/Respondents/Respondents

Prayer in C.M.P.No.8429 of 2021 in S.A.No.521 of 2008:

Petition filed under Section 5 of the Limitation Act, 1960 to condone the delay of 1463 days in filing the petition to set aside the abatement caused due to the death of the sole appellant in S.A.No.521 of 2008.

Prayer in C.M.P.No.8430 of 2021 in S.A.No.521 of 2008:

Petition filed under Order 22 Rule 9 of the Code of Civil Procedure read with 151 of the Code of Civil Procedure to set aside the abatement caused due to the death of the sole appellant in S.A.No.521 of 2008.

Prayer in C.M.P.No.8431 of 2021 in S.A.No.521 of 2008:

Petition filed under Order 22 Rule 3 of the Code of Civil Procedure read with 151 of the Code of Civil Procedure to bring on record the petitioners/proposed appellants 2 and 3 as legal representatives of the deceased sole appellant and rank him as appellant Nos.2 and 3 in S.A.No.521 of 2008.

Prayer in S.A.No.521 of 2008:

Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 21.08.2007 on the file of the learned Principal Sub Judge, Chengalpattu in A.S.No.54 of 2006 by dismissing the First Appeal and confirming the Judgment and Decree dated 12.04.2006 of the learned District Munsif -cum- Judicial Magistrate, Thirukazhukundram in O.S.No.10 of 2000.

Prayer in C.M.P.No.8421 of 2021 in S.A.No.522 of 2008:

Petition filed under Section 5 of the Limitation Act, 1960 to condone the delay of 3083 days in filing the petition to set aside the abatement caused due to the death of the sole appellant in S.A.No.522 of 2008.



Prayer in C.M.P.No.8417 of 2021 in S.A.No.522 of 2008:

Petition filed under Order 22 Rule 9 of the Code of Civil Procedure read with 151 of the Code of Civil Procedure to set aside the abatement caused due to the death of the sole appellant in S.A.No.522 of 2008.

Prayer in C.M.P.No.8418 of 2021 in S.A.No.522 of 2008::

Petition filed under Order 22 Rule 3 of the Code of Civil Procedure read with 151 of the Code of Civil Procedure to bring on record the petitioners/proposed appellants 2 to 6 as legal representatives of the deceased sole appellant and rank him as appellant Nos.2 to 6 in S.A.No.522 of 2008.

Prayer in S.A.No.522 of 2008: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 21.08.2007 on the file of the learned Principal Sub Judge, Chengalpattu in A.S.No.55 of 2006 by dismissing the First Appeal and confirming the Judgment and Decree dated 12.04.2006 of the learned District Munsif -cum- Judicial Magistrate, Thirukazhukundram in O.S.No.63 of 2000.

Prayer in C.M.P.No.8416 of 2021 in S.A.No.523 of 2008:

Petition filed under Section 5 of the Limitation Act, 1960 to condone the delay of 3537 days in filing the petition to set aside the abatement caused due to the death of the sole appellant in S.A.No.523 of 2008.

Prayer in C.M.P.No.8419 of 2021 in S.A.No.523 of 2008:

Petition filed under Order 22 Rule 9 of the Code of Civil Procedure read with 151 of the Code of Civil Procedure to set aside the abatement caused due to the death of the sole appellant in S.A.No.523 of 2008.

Prayer in C.M.P.No.8420 of 2021 in S.A.No.523 of 2008:

Petition filed under Order 22 Rule 3 of the Code of Civil Procedure read with 151 of the Code of Civil Procedure to bring on record the petitioners/proposed appellants 2 to 4 as legal representatives of the deceased sole appellant and rank him as appellant Nos.2 to 4 in S.A.No.523 of 2008.

Prayer in S.A.No.523 of 2008: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 21.08.2007 on the file of the learned Principal Sub Judge, Chengalpattu in A.S.No.64 of 2006 by dismissing the First Appeal and confirming the Judgment and Decree dated 12.04.2006 of the learned District Munsif -cum- Judicial Magistrate, Thirukazhukundram in O.S.No.64 of 2000.

For Appellants : Mr.V.Raghupathi
in all appeals and for Petitioner
in all CMPS



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For Respondents : Ms.C.R. Rukmani
for R1 and R3 in S.A.No.521 of 2008 and
RR 1,3 in all CMPS
R2 - Died in S.A.No.521 of 2008

COMMON JUDGMENT

These petitions are filed to condone the delay in filing the appeals to set aside the abatement caused due to the death of the appellants in the respective Second Appeals.

2.S.A.No.521 of 2008 arises against the Judgment and Decree in A.S.No.54 of 2006 on the file of the learned Principal Sub Judge, Chengalpattu confirming the Judgment and Decree in O.S.No.10 of 2000 on the file of the learned District Munsif -cum- Judicial Magistrate, Thirukazhukundram.

3.The appellant was the plaintiff in the above suit and the suit was filed for a declaration that he is the absolute owner of the suit property and for permanent injunction restraining the defendants, their men, agents, or servants from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit properties

4.S.A.No.522 of 2008 is filed challenging the Judgment and Decree in A.S.No.55 of 2006 on the file of the learned Principal Sub Judge, Chengalpattu confirming the Judgment and Decree of the learned District Munsif -cum- Judicial Magistrate, Thirukazhukundram in O.S.No.63 of 2000.

5.The appellant is the plaintiff therein and the plaintiff has sought for a bare injunction restraining the defendants, their men, agents, or servants from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit properties.

6.S.A.No.523 of 2008 is filed challenging the Judgment and Decree in A.S.No.64 of 2006 on the file of the learned Principal Sub Judge, Chengalpattu in and by which the learned Judge confirmed the Judgment and the Decree of the learned District Munsif -cum- Judicial Magistrate, Thirukazhukundram in O.S.No.64 of 2000.

7.The appellant is the plaintiff in the said suit and the suit has been filed for a permanent injunction restraining the defendants, their men, agents, or servants from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit properties.



8. Pending the appeal, the appellants had passed away and the tabular statement hereinbelow provides the date of death and the number of days delay in filing the applications to set aside the abatement:

Second Appeal Number	C.M.P.No.	Date of death	Number of days delay
(1) S.A.No.521/2008	8429 of 2021	15.10.2015	1463
(2) S.A.No.522/2008	8421 of 2021	09.05.2011	3083
(3) S.A.No.523/2008	8416 of 2021	09.02.2010	3537

9. In the affidavit filed in support of the above petitions, identical reasons have been provided for.

10. In C.M.P.No.8429 of 2021 in S.A.No.521 of 2008, the defendants would state in Paragraph 5 as follows:

"5. I submit that my father did not inform the pendency of the Second Appeal to me and my brother. On 23.04.2021, my father's friend one Sundaramurthy informed that my father's counsel contacted him, through his junior advocate and informed the above pending Second Appeal immediately. I contacted my present counsel along with my father's friend Sundaramurthy and informed my father death and also given particulars relate to legal heirs. Hence, the present petitions are filed. There is a delay of 1463 days in filing petitions to set aside the abatement along with legal heirs petition. Unless the said petitioners not allowed I will lose my case and I will be thrown out from the schedule premises."

11. Likewise, in C.M.P.No. 8421 of 2021 in S.A.No.522 of 2008, the defendants would state in Paragraph 5 as follows:

"5. I submit that my father did not inform the pendency of the Second Appeal to me and my brother. On 23.04.2021, my father's friend one Sundaramurthy informed that my father's counsel contacted him, through his junior advocate and informed the above pending Second Appeal immediately. I contacted my present counsel along with my father's friend Sundaramurthy and informed my father death and also given particulars relate to legal heirs. Hence, the present petitions are filed. There is a delay of 3083 days in filing petitions to set aside the abatement along with legal heirs petition. Unless the said petitioners not allowed I will lose my case and I will be thrown out from the schedule premises."



12. Likewise, in C.M.P.No. 8416 of 2021 in S.A.No.523 of 2008, the defendants would state in Paragraph 5 as follows:

"5. I submit that my father did not inform the pendency of the Second Appeal to me and my brother. On 23.04.2021, my father's friend one Sundaramurthy informed that my father's counsel contacted him, through his junior advocate and informed the above pending Second Appeal immediately. I contacted my present counsel along with my father's friend Sundaramurthy and informed my father's death and also given particulars relate to legal heirs. Hence, the present petitions are filed. There is a delay of 3537 days in filing petitions to set aside the abatement along with legal heirs petition. Unless the said petitioners not allowed I will lose my case and I will be thrown out from the schedule premises."

Therefore, from the above statements, it is clear that it is one Sundaramurthy who has been the point of contact in these proceedings.

13. The respondents have filed a counter resisting the said petitions stating that the same is nothing but an abuse of process of Court and that the deponents have come forward with the false case. In the counter to C.M.P.No.8429 of 2021, the respondents would contend that the 1st respondent had died as early as on 14.01.2009 and the appellants who are the residents of the same Village who are aware of his death have not taken steps to bring on record the legal representatives of the deceased 1st respondent. Thereafter, the 2nd defendant Kesavan died on 14.11.2017. Steps had not been taken to bring on record the legal representatives of the deceased. The respondent has further stated that the wife of Mari Naicker, the deceased appellant is very much alive and a false affidavit has been filed stating that she is no more. It is their contention that Sundaramurthy is conducting the case. The learned counsel would submit that this appeal has been listed on three occasions earlier and a Memo had been filed informing about the same despite which no steps have been taken to implead the legal representatives of the deceased respondents 1 and 2.

14. The respondents would further submit that there are proceedings pending before the Revenue Authorities between the appellants and the respondents and the parties are fully aware about the pendency of the Second Appeal. That apart, the appellant has sold the property to the said Sundaramurthy. The respondent has also stated that Sundaramurthy appears to be involved in cases of land grabbing and there are suits and Writ Petitions pending against him. The said Sundaramurthy is running several businesses which includes quarrying, sale of liquor, etc., This sale is totally in violation of the orders



of this Court in W.P.No.7246 of 2001 wherein parties were directed to maintain Status-Quo.

15. In the counter in C.M.P.No.8421 of 2021 in S.A.No.522 of 2008, the respondents would reiterate the death of the respondents 1 and 2 and the fact that they have not brought on record the respective legal representatives. That apart, the respondents would further submit the fact that the petitioners are not shown in their order of seniority in age which would itself show that the petitions have not been prepared by the said petitioners. This suspicion is further fortified when on enquiry with the petitioners they have stated that they have absolutely no knowledge about the filing of the petition. Even in the instant case, the properties had been sold to the said Sundaramurthy. The parties are very much aware about the pendency of these proceedings since the enquiry is pending before the Revenue Authorities between the parties.

16. In C.M.P.No.8416 of 2021 in S.A.No.523 of 2008, the respondents apart from contending that the legal representatives of the 1st and 2nd respondents had not been brought on record and would also submit that the affidavit does not show the correct address of the legal representatives of the deceased persons as well as their age.

17. That apart, the Door Number and Street Number have not been mentioned and the respondents had enquired with the legal representatives as to whether they had filed any petition, they had answered in the negative. This property has also been sold to the said Sundaramurthy in violation of the orders of this Court in W.P.No.7246 of 2001. Therefore, she would contend that the respondents seek to have the application be dismissed.

18. Mr. Raghupathi, learned counsel making his submissions on behalf of the appellant would reiterate the contents of the affidavit filed in support of the applications, and stated that the Court should be liberal in condoning the delay. He would rely upon the following Judgments of this Court as follows:

(1) Subramani and others v. Ramasamy and another [CDJ 2007 MHC 1207] (Paragraphs 10 and 11)

(2) Ram Nath Sao @ Ram Nath Sahu and others v. Gobardhan Sao and others [CDJ 2002 SC 190] (Paragraphs 9, 10 and 12)

(3) Orders in C.R.P.(NPD) No.3476 of 2012 dated 03.08.2020 in the case of Santha (died) and others v. Ashwapathi (died) and others.

19. Ms. C.R. Rukmani, learned counsel would reiterate the



contentions pleaded in the counter and would submit that the legal representatives of the appellants have no interest in the property as the same has been sold and it is only Sundaramurthy who shadow fighting as he has purchased these properties subject matter of the litigation. The Sale itself is contrary to the orders of this Court in W.P.No.7642 of 2001. She would submit that a false affidavit has been filed stating that the wife of the appellant in S.A.No.521 of 2008 is no more when she was very much alive. She would therefore submit that the condonation of the delay is not automatic but should be only on the sufficient cause to be shown and the conduct of the petitioner who approaches the Court for condoning the delay has to be blemishless.

20. Heard the learned counsels appearing on either side and perused the papers.

21. From the records filed by the respondents, it is seen that by order dated 10.08.2001 in W.M.P.Nos.10867 and 19758 of 2001 in W.P.No.7642 of 2001 which was the Writ Petition filed by the deceased 1st respondent herein against the Revenue Department of the State as well as the appellants in these Second Appeals, this Court has passed an interim order stating that the parties should maintain Staus-Quo and shall not take advantage of the Interim Stay for claiming injunction or any right before the Civil Court. This interim order has been confirmed when the Writ Petition itself has been disposed of by order of this Court on 14.11.2011, wherein this Court has been pleased to pass the following orders:

"7. In the result, the Writ Petition is allowed and impugned order is set aside and the matter is remanded to the first respondent for fresh consideration. The first respondent shall issue notice to the petitioner and all other persons interested, conduct an enquiry after calling for all the relevant records from the respondents 2 to 4 and after affording an opportunity of personal hearing to the petitioner and the respondents 5 to 23 and any other persons who may be interested in the property, that several sale transactions have taken place in the interregnum. Until the first respondent considers the matter afresh as directed above, the status quo as regards the entries in the Revenue records, pursuant to the impugned order shall be maintained and shall abide by the fresh orders to be passed by the first respondent. No costs. Consequently, connected Miscellaneous Petition is closed."

22. Another factor which would show that the deceased



appellants had not approached this Court with clean hands is evidenced from the records that the appellant in S.A.No.523 of 2008 has sold the property to Sundaramurthy under a registered Sale Deed dated 19.07.2004, after the Interim Stay had been granted by this Court. The appellant Mari Naicker in S.A.No.521 of 2008 along with his son Ramesh, one of the petitioners herein had sold the property to the said Sundaramurthy under a registered Sale Deed dated 13.12.2007. Both the sales have taken place even before the filing of the Second Appeal. In fact, Kanniammal, the appellant in S.A.No.523 of 2008 has sold her property pending the suit. Mari Naicker and his son have sold the property after the Decree in the Appeal Suit. The appellant in S.A.No.522 of 2008 has sold the property to the said Subdaramurthy under a Sale Deed dated 16.04.2013 during the pendency of the Second Appeal. All these Sale Deeds would recite that the property is being sold free of any encumbrance and there is no claim in respect of the property. This statement is totally false to the knowledge of both the vendors and the purchasers. This clearly demonstrates the fact that the appellants intent on keeping the litigations simmering. Sale Deeds have been executed in violation of orders of this Court. The reasons given for the delay is identical and does not contain sufficient reasons, especially, since the parties are litigating before the Revenue Authorities are fully aware about the pendency of the Appeal Suit.

23.The condonation of delay is not automatic. No doubt, sufficient cause requires a liberal consideration but however the same should not be to the detriment of the other parties and that too when the persons seeking condonation has come to Court with the unclean hands and their conduct is suspect. The facts would clearly show that the appellants no longer have an interest in the subject matter of these proceedings and it is the said Sundaramurthy who wants to keep the appeal alive since he has purchased the property in violation of the orders of this Court.

24.In the result, C.M.P.Nos.8416 to 8421 and 8429 to 8431 of 2021 are dismissed. Consequently, the connected Petitions are also dismissed.

Since C.M.P.Nos.8416 to 8421 and 8429 to 8431 of 2021 are dismissed the Second Appeals stand dismissed as abated. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar



mps

To

1.The Principal Sub Judge,
Chengalpattu.

2.The District Munsif -cum- Judicial Magistrate,
Thirukazhukundram.

Copy To:

The Section Officer
V.R. Section,
High Court, Madras-104.

+3cc to M/s.V.Raghupathi, Advocate, S.R.No.33035,33036,33037

S.A.Nos.521 to 523 of 2008
and C.M.P.No.8416 to 8421
and 8429 to 8431 of 2021

RSV(CO)
SB(19/08/2021)