



C.M.P.No.13931 of 2021
in C.M.A.No.913 of 2012

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S.M.SUBRAMANIAM, J.

The miscellaneous petition is filed to recall the order dated 19.02.2021 passed in C.M.A.No.913 of 2012.

2. The learned counsel for the petitioner made a submission that the petitioners 2 and 3 are the daughters of the first petitioner and all the three are legal heirs of the first respondent Thiru.R.Sowbagyarajan in C.M.A.No.913 of 2012.

3. The Civil Miscellaneous Appeal is filed, challenging the judgment and decree dated 24.08.2011 passed in A.S.No.15 of 2010 on the file of the Sub Court, Udumalpet, remanding the matter to the trial Court by reversal of Judgment and Decree made in C.F.R.No.3462 (Unnumbered Complaint) dated 18.09.2010.



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4. The grievances of the appellant in C.M.A.No.913 of 2012 is that the first respondent died on 06.11.2014 and petition to implead the legal heirs was filed. This Court ordered notice to the impleaded legal heirs of the deceased first respondent on 26.11.2015. Private Notice was also permitted. However, no steps were taken during the relevant point of time by the appellants and Batta and Affidavit of Service (AOS) was also not filed. However, this factum was unable to be placed since the first respondent died and the legal heirs was not aware of the final hearing. Thus, they could not able to defend their case at the time of final hearing. The learned counsel for the petitioner made a submission that the first respondent was the contesting party and therefore, after his death, the legal heirs must be provided with an opportunity to defend their case in accordance with law.

5. The factual submissions are not disputed by the respondents, who are the appellants in the Civil Miscellaneous Appeal. In view of the fact that the notice was not served to the legal heirs of the deceased first respondent and steps were not taken by the appellants by paying Batta during the relevant point of time, this Court is of an opinion that the order is to be



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recalled and the matter is to be heard afresh in order to provide opportunity to all the parties.

6. Accordingly, the judgment dated 19.02.2021 passed in C.M.A.No.913 of 2012 stands recalled and Registry is directed to list the matter for final hearing after two weeks.

22.11.2021

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