

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

C.M.P. No. 343 of 2014

in

C.M.A. No. 1677 of 2002

Chellamuthu .. Petitioner/Appellant/2nd Defendant

-vs-

V.S.Subbaraya Gounder (died)

M.Kulandaisamy Gounder (died)

1. S.Shanmugam

2. Karuppana Gounder

3. Rasathi

4. Mani

..1 to 4 Respondents/3 to 6 Respondents

5. S.Magudapathi

..5 & 6 Respondents/LRs of 1st Respondent

6. S.Madeswaran

7. Kavundayammal

8. K.N.Thangamuthu

9. K.Annapoorani

..7 to 9 Respondents/LRs of the 2nd Respondent

PRAYER: Civil Miscellaneous Petition filed under Order 41 Rule (19) of CPC to restore the appeal C.M.A. No. 1677 of 2002 to file which was dismissed as abated by this Hon'ble Court on 22.04.2010.

CMA.NO.1677/2002

Civil Miscellaneous Appeal against the Judgement & Decree in Review Appln.IA.No.938/2001 in AS.No.65/99 dated 07/11/2001 on the file of the Second Additional District Judge, Erode.

For Appellant : Ms.J.Prithivi
for Mr.S.Kaithamalai Kumaran

For Respondents: : Mr.N.Manokaran for R1
Mr.V.P.Sengottuvel for R2 & R3
Mr.A.Sureshsakthi Murugan for R4
Mr.R.Devaraj for R6
No appearance for R5, R7, R8& R9

O R D E R

The Civil Miscellaneous Petition is filed to restore the appeal in C.M.A. No. 1677 of 2002 which was dismissed as abated by this Court on 22.04.2010.

2. The C.M.A. No. 1677 of 2002 was filed under Order 43 Rule 1(w) of CPC, challenging the judgment passed in Review Application in I.A. No. 938 of 2001 in A.S. No. 65 of 1999 dated 07.11.2001. The Civil Miscellaneous Appeal was filed in the year 2002 and the Civil Miscellaneous Appeal was taken up for hearing by this Court on 22.04.2010 and this Court passed an order stating that " it is reported by the learned counsel for the appellant that the first respondent died on 23.09.2006 and the second respondent died on 09.12.2005 and so far though the period is over for taking steps to bring the Legal Representatives on record, steps have not been taken, thereby, allowing the appeal to be abated. Hence the appeal is dismissed as abated. No costs."

3. Though the final order in the Civil Miscellaneous Appeal passed on 22.04.2010, no steps have been taken by the appellant for a further period of four weeks. The present Civil Miscellaneous Petition was filed on 11.02.2014, after a lapse of four years from the final order passed in the Civil Miscellaneous Appeal. This being the fact, the respondents have filed a counter, raising an objection, stating that, all along, the matter was not persuaded by the appellant and they have allowed the matter to be dismissed as abated and now after the lapse of four years, the appeal cannot be restored.

4. There was a continuous lapse on the part of the appellant in pursuing the appeal. The appeal was dismissed as abated on 22.04.2010 and even the restoration petition was filed after four years. This, being the fact, this Court cannot entertain the Miscellaneous Petition now filed and accordingly C.M.P. No. 343 of 2014 in C.M.A. 1677 of 2002 stands dismissed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Second Additional District Judge,
Erode.

+1cc to Mr.S. KAITHAMALAIKUMARAN, Advocate, S.R.No.1986

CA(CO)
SM (10/02/2021)

C.M.P. No. 343 of 2014
in
C.M.A. No. 1677 of 2002