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IN THE HIGH COURT OF JUDICATURE AT MADRAS
(TESTAMENTARY AND INTESTATE JURISDICTION)

FRIDAY, THE 08TH DAY OF OCTOBER 2021

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A.No.3138 of 2021
and
Application S.R.No.75825 of 2021

T.O.S.No. 84 of 2013

In the matter of the Indian
Succession Act, 1925
(Act XXXIX of 1925,
and
In the matter of Last Will and
Testament of P.Sathyamoorthy
(Deceased)

DR.SHRI.P.S.MURALIDHARAN,
SON OF LATE P.SATHYAMOORTHY,
FLAT G-6, ARVIND APARTMENTS,
PLOT NO.21, INNER RING ROAD,
VADAPALANI,
CHENNAI - 600 026

..PETITIONER/PLAINTIFF

-VS-

1. SHRI.P.S.SRIDHAR
SON OF LATE P.SATHYAMOORTHY,
H-21, HIG FLATS,
MANTHOPE COLONY,
ASHOK NAGAR,
CHENNAI - 600 083

..CAVEATOR/DEFENDANT



A.No.3138 of 2021 and A.Diary No.75825 of 2021:

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DR.P.S.MURALIDHARAN,
SON OF LATE P.S.SATHYAMOORTHY,
FLAT G-6, ARVIND APARTMENTS,
PLOT NO.21, INNER RING ROAD,
VADAPALANI,
CHENNAI - 600 026

..APPLICANT/PLAINTIFF
in A.No.3138 of 2021 and A.Diary
No.75825 of 2021

-VS-

P.S.SRIDHAR
SON OF LATE P.S.SATHYAMOORTHY,
H-21, HIG FLATS,
MANTHOPE COLONY,
ASHOK NAGAR,
CHENNAI - 600 083

..CAVEATOR/DEFENDANT
in A.No.3138 of 2021 and A.Diary
No.75825 of 2021

1. S.RENUKA,

2. S.SRIKANTH

3. S.SRIDEVI

(NOS 1 TO 3 WIFE OF
SON OF DAUGHTER OF LATE P.S.SRIDHAR,
RESPECTFULLY AGED ABOUT 63, 39 AND 41YEARS
ALL AT 21, HIG FLATS, MANTHOPE COLONY,
ASHOK NAGAR, CHENNAI 600 083.

..RESPONDENTS 1 TO 3 / PROPOSED
LR'S OF DECEASED SOLE DEFENDANT
in A.No.3138 of 2021 and A.Diary
No.75825 of 2021



A.No.3138 of 2021:

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This application praying that this Hon'ble court be pleased to Condone the delay of 178 days in filing the application to restore T.O.S.No.84 of 2013 (O.P.No.9 of 2013) to file.

A.diary No.75825 of 2021:

This application (diary No.75825 of 2021) praying that this Hon'ble court be pleased to set aside the order dated 29.1.2021 restore T.O.S.No.84/13 (O.P.No.9/13) to file.

This application and application (diary No.75823 of 2021) coming on this day before this Court for hearing, the court made the following order:-

Mr.Kamalnath, learned counsel appears for the respondents 1 and 3. The 2nd respondent is served. Mr.Kamalnath, learned counsel would submit that he is in Australia.

2. The application in A.No.3138 of 2021 has been filed seeking to condone the delay of 178 days in filing the application to restore the T.O.S.No.84 of 2013, which was dismissed for not taking steps to bring on record the legal representatives of the sole defendant. The application in Sr.No.75825 of 2021 has been filed seeking restoration of the testamentary original suit.



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3. The sole defendant had died on 08.11.2020. The testamentary original suit came to be dismissed on 29.01.2021 on the ground that the legal representatives have not been brought on record. Now, the said dismissal is sought to be set aside.

4. No doubt, there is a delay in seeking to set aside the said order of dismissal. The defendant having died on 08.11.2020, the plaintiff had time till 06.02.2021 to file an application to bring the legal representatives on record. Only thereafter, the Court could have dismissed the suit as having abated or for not taking steps. The dismissal of the suit on 29.01.2021 before the period allowed under the Limitation Act for bringing on record the legal representatives is clearly illegal.

5. Hence, the order dated 29.01.2021 is recalled. The application in A.No.3138 of 2021 is dismissed as un-necessary. The application filed seeking restoration of the testamentary original suit in Sr.No.75825 of 2021 stands rejected as un-necessary.

6. The Registry is directed to number the applications to condone the delay in setting aside the abatement, setting aside abatement and the



application to bring on record the legal representatives and post them on
22.10.2021.

Sd/-R.S.M.J.
08.10.2021

//Certified to be true copy//

Dated at this the day of 2021

SU/18.10.2021

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies
of the Orders/Judgments/Decrees in this format.