

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRP (NPD) Nos.4080, 4084, 4085 and 4086 of 2018

**and
C.M.P.No.22568 of 2018**

CRP (NPD) No.4080 of 2018

Subramani (Died)

1. Santhamma
2. Malliga
3. Vijaya
4. Babu
5. Ramesh

... Petitioners

Vs.

Mohan

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the order of the learned Subordinate Judge, Arakkonam in I.A.No.33 of 2018 in I.A.No.51 of 2016 in A.S.No.72 of 2014 dated 29.06.2018 and allow this Civil Revision Petition.

For Petitioners : Mr.P.Dinesh Kumar

For Respondent : Mr.G.Jermiah

CRP (NPD) No.4084 of 2018

Subramani (Died)

1. Santhamma
2. Malliga
3. Vijaya
4. Babu
5. Ramesh

... Petitioners

Vs.

Mohan

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and docket order of the learned Subordinate Judge, Arkkonam in I.A.No.34 of 2018 in I.A.No.51 of 2016 in A.S.No.72 of 2014 dated 29.06.2018 and allow this Civil Revision Petition.

For Petitioners : Mr.P.Dinesh Kumar

For Respondent : Mr.G.Jermiah

CRP (NPD) No.4085 of 2018

Subramani (Died)

1. Santhamma
2. Malliga
3. Vijaya
4. Babu
5. Ramesh

... Petitioners

Vs.

Mohan

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the order of the learned Subordinate Judge, Arkkonam in I.A.No.35 of 2018 in I.A.No.51 of 2016 in A.S.No.72 of 2014 dated 29.06.2018 and allow this Civil Revision Petition.

For Petitioners : Mr.P.Dinesh Kumar

For Respondent : Mr.G.Jermiah

CRP (NPD) No.4086 of 2018

Subramani (Died)

1. Santhamma
2. Malliga
3. Vijaya
4. Babu
5. Ramesh

... Petitioners

Vs.

Mohan

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and docket order of the learned Subordinate Judge, Arkkonam in I.A.No.36 of 2018 in I.A.No.51 of 2016 in A.S.No.72 of 2014 dated 29.06.2018 and allow this Civil Revision Petition.

For Petitioners : Mr.P.Dinesh Kumar

For Respondent : Mr.G.Jermiah

COMMON ORDER

C.R.P (NPD) No.4080 of 2018 is filed as against the order passed in I.A.No.33 of 2018 in I.A.No.51 of 2016 in A.S.No.72 of 2014 dated 29.06.2018 on the file of the learned Subordinate Judge, Arakkonam, thereby dismissing the petition to condone the delay of 302 days in filing the restoration petition.

2. C.R.P (NPD) No.4085 of 2018 is filed as against the order passed in I.A.No.34 of 2018 in I.A.No.51 of 2016 in A.S.No.72 of 2014 dated 29.06.2018 on the file of the learned Subordinate Judge, Arakkonam, thereby dismissing the petition to restore the restoration petition.

3. C.R.P (NPD) No.4084 of 2018 is filed as against the order passed in I.A.No.35 of 2018 in I.A.No.51 of 2016 in A.S.No.72 of 2014 dated 29.06.2018 on the file of the learned Subordinate Judge, Arakkonam, thereby dismissing the petition to condone the delay in filing the legal heirs petition.

4. C.R.P (NPD) No.4086 of 2018 is filed as against the order passed in I.A.No.36 of 2018 in I.A.No.51 of 2016 in A.S.No.72 of 2014 dated 29.06.2018 on the file of the learned Subordinate Judge, Arakkonam, thereby dismissing the petition to implead the legal representatives of the deceased appellant.

5. In all the petitions, the petitioners 2 to 5 herein are the legal heirs of the first appellant in the Appeal Suit. The respondent is the plaintiff. The respondent filed a suit for permanent injunction, mandatory injunction and recovery of possession in respect of the suit properties. The suit was duly contested and the same was decreed by the judgment and decree dated 31.10.2011. Aggrieved by the same, the father of the petitioners 2 to 5 and the first petitioner filed the Appeal Suit. While pending the Appeal Suit, the father of the petitioners 2 to 5 fell ill, due to which, the Appeal Suit was dismissed for default on 30.10.2014. Immediately, on 25.11.2014, he filed a petition to restore the Appeal Suit in I.A.No.51 of 2016. The first petitioner herein is not looking after the case and the father of the petitioners 2 to 5 alone is looking after the case. Thereafter, again he fell ill and died on

16.11.2016. Therefore, the petition to restore the Appeal Suit was dismissed on 10.08.2017. In the meanwhile, the respondent, after dismissal of the Appeal Suit filed an Execution Petition in E.P.No.27 of 2015, in which the father of the petitioners 2 to 5 herein was duly served and he entered appearance on 10.09.2015.

6. While pending the Execution Petition as well as the restoration petition to restore the Appeal Suit, he died on 16.11.2016. Thereafter, in the Execution Petition, the respondent filed a petition to bring the legal heirs of the deceased first appellant in the Appeal Suit on 04.09.2017 and the petitioners 2 to 5 herein entered appearance on 04.09.2017. Thereafter, they came to understand that the Appeal Suit was already dismissed for default and the restoration petition was also dismissed for default. Therefore, they filed a petition on 07.03.2018 to condone the delay in filing the petition to condone the delay of 302 days to restore I.A.No.51 of 2016, to restore the restoration petition i.e., I.A.No.51 of 2016 which was dismissed for default on 10.08.2017, to condone the delay of 144 days in filing the legal heir petition and to implead them as the petitioners in I.A.No.51 of 2016 and appellants 3 to 6 in the Appeal Suit as the legal representatives of the

deceased first appellant. All these applications were dismissed for the reasons that no justifiable reason was stated by the petitioners herein. Further, the law of limitation is a substantial law and has definite consequences on the right and obligation of a party.

7. The Court below had taken very stringent rule in the condone delay petition. The Hon'ble Supreme Court of India and this Court repeatedly held that the Court below shall take a liberal view while considering the condone delay petition.

8. In the case on hand, admittedly, the father of the petitioners 2 to 5 died on 16.11.2016, The only delay is that when they entered in their appearance in the Execution Court on 04.09.2017, they failed to file a present petition immediately and they filed the petition only on 07.03.2018. Though the petitioners 2 to 5 entered their appearance on 04.09.2017, they have to collect all the papers and prepare the petitions and filed the same on 07.03.2018. Therefore, the petitioners may be given one more opportunity to pursue their Appeal Suit, since the suit was decreed.

9. In view of the above discussion, these Civil Revision Petitions are allowed and the orders passed in I.A.Nos.33, 34, 35, 36 of 2018 in I.A.No.51 of 2016 in A.S.No.72 of 2014 dated 29.06.2018 are hereby set aside on condition that the petitioners shall pay a sum of Rs.10,000/- (Rupees Ten Thousand only) as costs to the respondent within a period of two weeks from the date of receipt of a copy of this order, failing which this order shall stand automatically cancelled. On such compliance, the Appellate Court is directed to restore the Appeal Suit and dispose of the same within a period of three months thereafter. Consequently, the connected Miscellaneous Petition is closed. No costs.

16.07.2021

Speaking/Non-speaking order

Index : Yes/No

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To

1. The Subordinate Judge, Arakkonam.

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2. The Section Officer,
V.R. Section, High Court of Madras.

G.K.ILANTHIRAIYAN,J.

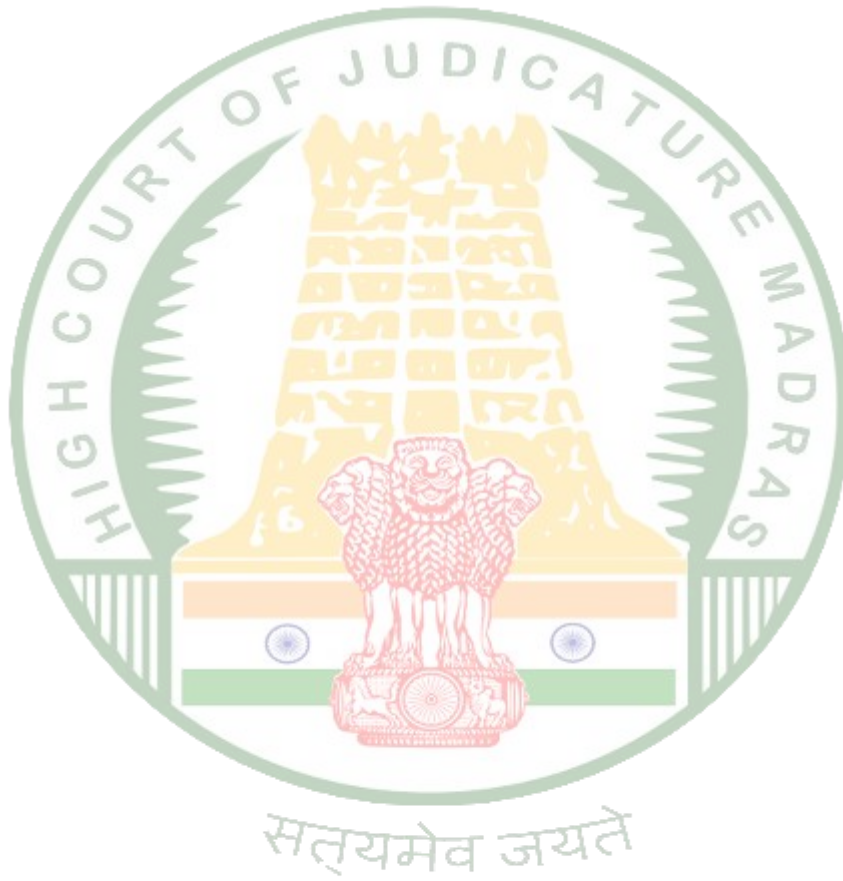
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4085 and 4086 of 2018**

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