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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Civil Appellate Jurisdiction)

Friday, the Twenty Sixth day of February
Two Thousand and Twenty One

PRESENT

The Hon'ble Mr.Justice N.SATHISH KUMAR

C.M.P. (MD) .No.886 of 2021
in A.S.No.1024 of 1993

O.M.S.ABDUL BASITH ALIM SAHIB (DIED)

1. O.M.A.Dhanaullah.

2. O.M.A.Udhuman Mydeen ...Petitioners/Proposed Respondents

Vs

O.M.S.Sheik Uduman Alim Sahib (died) .. Appellant in AS.No.1024/93

1. O.M.S.Hasan Makdoom

2. O.M.S.Abdul Wahith

3.O.M.S.Habeebullah

Prayer in C.M.P. (MD) .No.886 of 2021:-

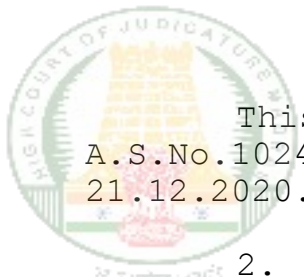
Civil Miscellaneous Petition filed under Order 41 Rule 19 of Civil Procedure Code praying this court to restore the first appeal in A.S.No.1024 of 1993, which was dismissed by this court on 21/12/2020.

Prayer in A.S.No.1024 of 1993:-

Appeal suit filed under Section 96 of Civil Procedure Code, against the judgment and decree dated 05/08/1993 in O.S.No.138 of 1989 on the file of the Subordinate Judge, Tenkasi in Tirunelveli District.

ORDER:-

Civil Miscellaneous Petition coming on for hearing on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.Niranjan S.kumar, Advocate for the Petitioners and the respondents not appeared either in person or by an Advocate and this court made the following order:-



This application is filed to restore the first appeal in A.S.No.1024 of 1993, which was dismissed by this Court on 21.12.2020.

2. Though this Court, by an order dated 22.02.2021, has allowed this application, mainly on the ground that the legal heirs of the appellant has filed this application to revive the appeal suit, now it is brought to the notice of this Court that the above application has been filed by the legal heirs of the defendants, without bringing them as Legal heirs on record. Therefore, without leave obtained, seeking such a relief for restoring the appeal does not arise. Accordingly, the order passed by this Court, dated 22.02.2021 is hereby recalled.

3. However, it is the contention of the learned counsel for the petitioners that the above Appeal Suit in A.S.No.1024 of 1993 got dismissed on the ground that nothing survives for adjudication. Taking advantage of the same, the respondents are filing an application before the Wakf Board. Therefore, the appeal suit may be restored on file, to agitate their rights in the appeal suit and prays for appropriate orders.

4. Admittedly, the suit is instituted as per the direction of the Division Bench. However, the suit got dismissed. As against which, the appeal suit has been filed and since the appellant died and no steps have been taken, the Appeal suit was also dismissed as abated. As the challenge in the main suit is as against the order of the Wakf Board of the year 1985 and the same got dismissed, it goes without saying that the wakf Board order stands revived.

5. Accordingly, the order dated 22.02.2021 passed by this Court in C.M.P.(MD)No.886 of 2021 is recalled. Consequently, the order passed by this Court in A.S.(MD)No.1024 of 1993, dated 21.12.2020, dismissing the Appeal Suit, stands revived.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

TO

The Subordinate Judge, Tenkasi.

Copy to :

The Section Officer, Judicial Section,
Madurai Bench of Madras High Court, Madurai.



+6cc to Mr.A.N.Ramanathan, Advocate SR Nos.7566, 7561 and 7550 to 7553

+6cc to Mr.V.Manikandan, Advocate SR Nos. 7554 to 7559

+1cc to Mr.Niranjana S.Kumar, Advocate SR No.8112

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ORDER DATED : 26/02/2021

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ORDER

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CMP. (MD) .No.886 of 2021

IN A.S.No.1024/1993

Giving direction and
etc. as stated within.

NS (CO)

TR(10.03.2021) 3P 16C