



C.M.P.Nos.11763, 13925 and 13926 of 2022

C.M.P.No.638 of 2023 in

S.A.No.285 of 2009

WEB COPY **P.T. ASHA, J.**

C.M.P.No.11763 of 2022 is filed to condone the delay of 55 days in setting aside the order of dismissal dated 15.06.2021.

2.C.M.P.No.13926 of 2022 is filed to set aside the abatement caused by the death of the sole appellant Rajammal.

3.C.M.P.No.13925 of 2022 is filed to condone the delay of 2162 days in setting aside the abatement caused by the death of the sole appellant Rajammal.

4.These petitions are filed invoking the provisions of Order 22 Rule 10 of the Code of Civil Procedure and are not one filed under the provisions of Order 22 Rule 4 of the Code of Civil Procedure.

5.The respondents have challenged the petitions on the ground that no application has been filed till date to bring on record the legal representatives of the deceased original appellant Rajammal. They would



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submit that Rajammal died on 19.04.2016 and the suit abated with effect from 18.07.2016. The present petitions have been filed by the *pendente lite* purchaser who was very much aware about the institution of the Second Appeal. It is the further case that it is only after the legal representatives is brought on record the petitioner could be mpleaded in the above suit.

6.Mr.R.Subramanian, learned counsel appearing for the petitioner would rely upon the Judgments of the Hon'ble Supreme Court in

(1)(2005) 11 Supreme Court Cases 403

Amit Kumar Shaw and another v. Farida Khatoon and another

(2)(2016) 1 Supreme Court Cases 730

Sharadamma v. Mohammed Pyrejan (dead) through legal representatives and another and

(3)2020-3-L.W.423

Gajaraba Bhikhubha Vadher and others v. Sumara Umar Amad (D) through legal heirs and others.

He would therefore submit that the petitioner need not even taken an application for condoning the delay, however, for the sake of record the same has been filed by the petitioner.



7.The learned counsel appearing for the respondents objected to the petitions being allowed.

8.Heard the learned counsels appearing on either side and perused the papers.

9.In the Judgment reported in **(2005) 11 Supreme Court Cases 403 [Amit Kumar Shaw and another v. Farida Khatoon and another]**, the Hon'ble Supreme Court was considering the petition filed by the subsequent purchasers for adding them as a party in the two appeals, the learned Judges culled out the difference between a petition under Order 1 Rule 10 and Order 22 Rule 10 of the Code of Civil Procedure as also Section 52 of the Transfer of Property Act. The learned Judges observed as follows:

“8.On a combined reading of Order 1 Rule 10, Order XXII Rule 10 of the Code of Civil Procedure and Section 52 of the Transfer of Property Act, can an application for substitution by a subsequent transferee be rejected and the subsequent purchaser be non-suited altogether is the prime question for consideration in these appeals.



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9.The object of Order 1 Rule 10 is to discourage contests on technical pleas, and to save honest and bona fide claimants from being non-suited. The power to strike out or add parties can be exercised by the Court at any stage of the proceedings. Under this Rule, a person may be added as a party to a suit in the following two cases:

(1) When he ought to have been joined as plaintiff or defendant, and is not joined so, or

(2) When, without his presence, the questions in the suit cannot be completely decided.

10.The power of a Court to add a party to a proceeding can not depend solely on the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a party. Such right, however, will include necessarily an enforceable legal right.

12.Under Order XXII, Rule 10, no detailed inquiry at the stage of granting leave is contemplated. The Court has only to be prima facie satisfied for exercising its discretion in



granting leave for continuing the suit by or against the person on whom the interest has devolved by assignment or devolution. The question about the existence and validity of the assignment or devolution can be considered at the final hearing of the proceedings. The Court has only to be prima facie satisfied for exercising its discretion in granting leave for continuing the suit.

13. In this connection, the provisions of Section 52 of the Transfer of Property Act, 1882 which has been extracted above may be noted.

14. An alienee pendente lite is bound by the final decree that may be passed in the suit. Such an alienee can be brought on record both under this rule as also under O 1 Rule 10. Since under the doctrine of lis pendens a decree passed in the suit during the pendency of which a transfer is made binds the transferee, his application to be brought on record should ordinarily be allowed.”



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10. Therefore, considering the fact that the Hon'ble Supreme Court has observed that the purchaser can be impleaded at any time if he has a substantial interest in the *lis*, the applications filed by the petitioner are allowed and the petitioner is brought on record in the place of the deceased Rajammal. The abatement caused due to the death of Rajammal is set aside. The petitioner herein is substituted in the place of the deceased appellant and he is permitted to continue in the proceedings. That apart, the petitioner is represented by Power of Attorney and the Power of Attorney has taken out an application to permit her to act as the Power Agent of the proposed appellant. Therefore, the petition is allowed.

11. In the meanwhile, it is also informed that one of the legal representatives of the deceased 1st respondent Krishnaveni Ammal is no more. The learned counsel for the respondents shall give necessary particulars to enable the petitioners to take steps to bring on record the legal representatives of the deceased Krishnaveni Ammal.



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Registry is directed to number the petitions to set aside the order of dismissal dated 15.06.2021 and restore the Second Appeal and the petition to substitute the petitioner in the place of the deceased appellant and permit the petitioner to continue the appeal and to recognise Ms.Vanishri as the Power of Attorney Agent of Ashok Kumar as per the Power of Attorney Deed dated 18.10.2019.

Post on 10.01.2023.

20.12.2022

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P.T. ASHA, J.

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C.M.P.Nos.11763, 13925
&13926 of 2022 & 638 of 2023
in S.A.No.285 of 2009

20.12.2022
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S.A.No.285 of 2009
and C.M.P.No.4440 of 2020
and M.P.Nos.1 and 2 of 2009

P.T. ASHA, J,

Post on 10.01.2023.

B/o
mps
20.12.2022
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