



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA (MD)No.85 of 2011

and

MP. (MD)No.1 of 2011

WEB COPY

- 1.Pitchaikani Ammal
2. Sahadevan
3. Chandra
4. Jenagan
5. Velan
6. Sekar
7. Indirani
8. Saraswathi

... Appellants/Petitioners/Appellants

Vs.

Kannipalam Ammal (Died)
Jeyarajakani Ammal (Died)

1. Marikani Ammal
2. Rathinapandi Nadar
3. Ganapathi Pandi
4. Chandrasekar
5. Saraswathi

... Respondents/Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed order 43 Rule 1 (t) of CPC, to set aside the fair and decreetal order dated 06.07.2010 in I.A No.94 of 2009 in A.S No.68 of 2004 on the file of the Sub Court, Valliyoor.

For Appellant : Mr.P.Bala Murugan
for M/s. Jaya Paul Associates
For Respondent : Mr.S.J.Chakkaravarthy
for M/s.Eddy & Emboss Law Firm.

J U D G M E N T

The appellants are the plaintiffs in O.S.No.9 of 1988 before the learned Principal District Munsif, Valliyoor. The suit was filed for the relief of recovery of possession. The appellant has also filed a suit in O.S.No.629 of 1988, before the same Court, for the relief of declaration of title to the suit property and also for permanent injunction. After a common trial, both the suits have been dismissed by a common judgement. Hence the appellants have preferred an appeal before the Principal Subordinate Court, Tirunelveli, in A.S.No.76 of 2004 which is made over to Principal District and Sessions Judge, Tirunelveli and A.S.No.68 of 2004 is made over to the Subordinate Judge, Valliyoor.



2.While, the A.S.No.76 of 2004, which is arising out of a common judgment, is pending before the Principal Subordinate Judge, Tirunelveli, the A.S.No.68 of 2004 was listed before the Subordinate Court, Valliyoor and the same was dismissed for default on 02.08.2004. Hence the plaintiff / appellant has filed two interlocutory applications. One under Section 5 of the Limitation Act to condone the delay and another interlocutory application to restore the first appeal which was dismissed for default. The condone delay application in I.A.No.309 of 2007 was allowed thereby, the delay of 1164 days was condoned. Consequently I.A.No.94 of 2009 for restoration of the appeal was taken up and the same was dismissed and hence this Civil Miscellaneous appeal.

3.Heard the rival submissions made by the parties.

4.Arising out of a common judgment, O.S.No.9 of 1988 filed by the one party and O.S.No.629 of 1988 filed by the other party, a common judgment was rendered and two separate appeals have been filed. However, by administrative action, one appeal was made over to I Additional Subordinate Court. It has put a trial and it appears to be the reason for the dismissal is for default and hence an opportunity has to be given since the other A.S.No.76 of 2004 is still pending with the Principal Subordinate Judge, Tirunelveli.

5.Accordingly, this Civil Miscellaneous Appeal is allowed. The order dated 06.07.2010 made in I.A.No.94 of 2009 in A.S.No.68 of 2004 on the file of the Subordinate Judge, Valliyoor, is set aside and A.S.No.68 of 2004 is ordered to be restored to file and also directed to be transferred to the Principal Subordinate Court, Tirunelveli, to be tried along with A.S.No.76 of 2004 and the learned Principal Subordinate Judge, Tirunelveli shall dispose of the same within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

pnn



To

1.The Principal Subordinate Judge,
Tirunelveli.

2.The I Additional Subordinate Judge,
Tirunelveli.

3.The Subordinate Judge,
Valliyoor.

COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.EDDY @ EMBBOSS LAW FIRM, Advocate (SR-9866[F]
dated 03/03/2022)

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PNN (CO)

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