



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Monday, the First day of August Two Thousand and Twenty Two

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PRESENT

The Hon`ble Mr.Justice P.VELMURUGAN

CMP(MD) . No.4722 of 2021

in

AS(MD) 73 of 2012

1. Aandroose,

2. C.Sivaramasankaran

3. M.Kannan

.. Petitioners/Appellants

Vs

1 C.L.Theodar,

2 C.M.Tharsilammal (Died)

3 R.Charles

4 P.Saroja

5 P.Gopalakrishanan

(The 4 & 5 respondents remain ex-parte in lower Court,
Hence notice already dispensed in Second Appeal)

6 K.Murugammal

... Respondents/Respondents

Prayer in CMP(MD) 4722 OF 2021 :-

This Miscellaneous Petition filed under order 41 Rule 19 of C.P.C., to set aside the order of dismissal for non-prosecution dated 30.03.2021 and restore the above A.S.(MD).No.73 of 2012 and thus render justice.

Prayer in AS(MD) 73 OF 2012:-

This Appeal Suit filed under section 96 of C.P.C., to preferred against the Judgment and Decree passed in OS No.87 of 2009 on the file of the Additional District Sessions Court, Fast Track Court No.I, Tirunelveli, dated 05.09.2011.



ORDER:-

This Appeal Suit coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.R.T.Arivukumar, Advocate for the Petitioner and of Mr.S.Srinivasa Ragavan, Advocate for the first respondents, this Court made the following order:

This petition is filed to set aside the order of dismissal for non-prosecution dated 30.03.2021 and restore the appeal in A.S.(MD) No.73 of 2012.

2.The only reason stated by the 3rd petitioner in the accompanying affidavit filed in support of this petition is that during the previous hearing his Advocate contacted him, informed that the second respondent passed away and also asked him to take steps to implead the legal representatives of the deceased 2nd respondent. Since the 2nd respondent was residing at Nagercoil and the petitioner is residing 80 kilometres away in Palayamkottai, he could not take steps immediately. This Court has dismissed the appeal for non-prosecution on the ground of non-taking of steps within the stipulated time, which is neither willful nor wanton. Therefore, the appeal has to be restored.

3.The learned counsel for the respondents filed counter affidavit, stating that the petitioners have not approached the Court with clean hands, they have suppressed several material facts and also the 1st petitioner even subsequent to filing of the suit, has transferred the properties with ulterior motive and also got collusive decree. Now, he is trying to execute the decree. Therefore, challenging that order, he has also filed Civil Revision Petition before this Court and the same is pending. In order to get over all these things, now, this affidavit has been filed. Therefore, this petition is to be dismissed.

4.Heard both sides and perused the records carefully.

5.Though the reason stated in the accompanying affidavit is not satisfied, as the appeal can be decided on merits, this Court is inclined to allow this petition. Accordingly, this Civil Miscellaneous Petition is allowed and the appeal in A.S.(MD)No.73 of 2012 is restored on file.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/08/2022

Sub Assistant Registrar(CS)



TO

The Additional District Sessions Judge,
Fast Track Court No.I, Tirunelveli,

WEB COPY

Copy to:

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

ORDER DATED : 01/08/2022

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ORDER
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CMP(MD) . No.4722 of 2021
in
AS(MD) No.73 of 2012

Giving direction and etc.
as stated within.

SP(CO)
TR(05.08.2022) 3P 5C