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C.M.P. No. 47 to 49 of 2015
in S.A.No.1133 of 2001

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in

S.A. No. 1133 of 2001

T.V. THAMILSELVI, J.

These petitions have been filed seeking to condone the delay of 1343 days in setting aside the abatement, to set aside the abatement caused due to the death of 3rd respondent, and to bring on record the proposed respondents 4 to 8 herein as legal representatives of deceased 3rd respondent.

2. Mr.N.Suresh, learned counsel for petitioner/appellant submitted that pending appeal, 3rd respondent died on 24.01.2001. He would submit that earlier the original appellant Nadiammal herself had filed an application in C.M.P. SR.No. 16435 of 2005 on 25.02.2005 for bringing on record the legal representatives of deceased 3rd respondent, which was returned by this court and thereafter, it was not represented by sole appellant's earlier counsel as the returned papers got mixed up with other papers. Subsequently, the deceased sole appellant's earlier counsel returned the case bundle and by that time, sole appellant died. He would submit that the



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returned papers from the court was not traced out and only recently the same was traced out and returned to the petitioner. Hence, there is no negligence on his part when in fact the sole appellant herself has taken steps to implead legal representatives of deceased 3rd respondent. In view of the same, there is a delay of 1675 days arose and the delay is neither willful nor negligent. Hence, he has filed the above petitions.

3. Mr.V.Sanjeevi, learned counsel for respondents 5 and 7 appeared and he would submit that at the time of filing appeal by the appellant on 17.07.2001, the 3rd respondent was no more and he died on 24.01.2001 itself. Now, they have filed application to implead his legal heirs. Therefore, the appeal was filed against deceased person, as such is not valid under law. Furthermore, the appellant has not taken steps to implead legal heirs of 3rd respondent and they have filed the petition only in the year of 2005 in C.M.P. SR.No.16435 of 2005 and the petitions were not filed properly, so it was returned by the registry. Finally, it was represented only in the year of 2009. So, there is a delay of 1675 days, for which, there is no valid reason on the side of appellant. Furthermore, as per law, each and every day has to be explained, but there is no sufficient reason assigned for the delay in



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bringing the legal representatives of deceased 3rd respondent and the reasons stated by the appellant is not acceptable one. Furthermore, the 3rd respondent purchased the property from 1st and 2nd defendants and the lower court categorically stated that having executed the sale deed, the suit was filed with false representation. Hence, he has raised strong objection in allowing the above petitions. To support his contentions, he relied on the authority reported in **1995 (II) CTC 329** in the case of **Union of India and another vs. K.Abborvam (deceased) and 15 others**, wherein this court held as follows :-

“Civil Procedure Code 1908, Order 22, Rule 4 – Respondent died on 24.5.1990 – Appeal presented on 11.6.1990 as if respondent was alive – Appeal presented against dead person was not valid – Setting aside abatement does not arise – Remedy is to seek amendment of cause title and apply for condonation of delay.

Civil Procedure Code, 1908, Order 22, Rule 4 – Petition for amendment of cause title and condonation of delay in filing appeal – Proper procedure not followed – Hence, prayer rejected – Party cannot take advantage of his own wrong.”

He has further relied on the authority reported in **2016 (1) CTC 61** in the case of **Amsawalli (died) and others vs. Sarangabani**, wherein this



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court held as follows :-

“Civil Procedure Code 1908 (5 of 1908), Sections 96 & 100 – First Appeal – Second Appeal – Appellate remedy – Nature and scope – Death of parties to Decree after passing of decree and before presentation of appeal – Practice of filing petition to accept cause title indicating legal representatives of deceased persons – Procedure contemplates seeking leave or permission to number Appeal – Legality – Right of appeal is creation of statute – No permission or leave is required from Court to file appeal by or against legal representatives of deceased – Practice of filing petition to accept cause title or Interlocutory Application to recognise legal representatives of deceased is incorrect – Appeal can be straight away filed by legal representatives of deceased who was party to decree under challenge.”

4. Heard rival submissions of learned counsel for petitioner and respondents 5 and 7 and perused the records.

5. Considering the facts and circumstances and on perusal of records, it reveals that the plaintiff filed a petition in M.C. 73 of 1966 before the Sub-Divisional Magistrate, Ulundurpet for claiming maintenance and the



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same was ordered. The 1st defendant/respondent has not paid any arrears, but he executed a settlement deed dated 19.05.1967 in favour of appellant and thereafter, colluding with other defendants, he cancelled the said settlement deed and after cancelling the settlement deed, he executed a sale deed in favour of 2nd defendant on 23.03.1988, which is marked as Ex.B3. Thereafter, the plaintiff filed a suit for cancellation of sale deed in O.S.No.253 of 1995, in which, the purchasers have contested the suit as defendants and the suit was decreed. But, in the first appeal, the trial court findings was reversed. Against which, the appellant preferred the present Second Appeal.

6. During the pendency of the proceedings, now he filed the petition to implead legal heirs of deceased 3rd respondent, who has purchased the property from the 1st defendant and plaintiff. Now, the learned counsel for respondents 5 and 7 would submit that the appellant has not taken steps immediately and even at the time of filing appeal itself, the 3rd respondent died. Against the deceased person, the appeal was filed.

7. Considering the entire facts and circumstances and though the



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objections raised by the learned counsel for respondents 5 and 7, the reasons assigned by the appellant seems to be justifiable one. However, at the time of filing appeal, the 3rd respondent was died and mere on technicality, the relief claimed by the plaintiff cannot be defeated. From the year of 1999 onwards, the appellant seeking for claim of maintenance from her husband and on the tactics made by him, she was not able to realise the fruits of maintenance till date. Therefore, this court is inclined to allow these petitions.

8. Issue notice through court to the proposed respondents 4 to 8 returnable by 14.08.2023. Private notice is also permitted.

9. The Registry is directed to carry out the necessary amendment in the cause title and post the matter on 14.08.2023.

26.07.2023

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