



C.M.P.No.1631 of 2023

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in S.A.No.1241 of 2005

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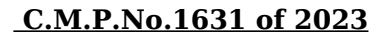
P.DHANABAL.J

This petition has been filed to condone the delay of 1473 days in filing the application to set aside the abatement caused due to the death of 5th respondent/Subbalakshmi.

2. Gist of the petition averments are as follows:

The petitioner herein is the appellant in the second appeal. He has filed the second appeal as against the judgement and decree passed by the Sub-Court Dharapuram in A.S.No.17 of 1996 dated 30.07.1996 by confirming the judgement and decree passed by the District Munsif Court, Dharapuram in O.S.No.169 of 1991 dated 15.09.1995.

2.1. When the Second Appeal is pending for hearing, the earlier counsel for the petitioner has not followed the case. In the mean time, the petitioner received notice dated 12.10.2022 from this Court for his appearance. Immediately he tried to contact his counsel but unable to contact him, then he came to Chennai to his Counsel Office and came to know that he died long ago. Thereafter, now through



2.2. In the second week of November 2022, the petitioner sent particulars of the deceased and thereafter, filed this application to implead the legal heirs. In the mean time, the 5th respondent died during the pendency of the appeal and the same was also not informed to the counsel. The 5th respondent died on 10.08.2018 leaving behind her legal heirs and the said persons have to be impleaded as parties in the Second Appeal. The legal heirs of the deceased Subbalakshmi is appropriate and necessary parties in the said case. Therefore, he filed petition to implead the legal heirs of the 5th respondent along with this application and to set aside the abatement order. hence, this petition is to be allowed.

The 7th respondent and the proposed respondents 8 and 9 are petitioner's brothers and sisters respectively. His Maternal grandfather and grand-mother, the deceased respondents 1 and 2 herein jointly executed a registered will dated 06.03.1991, in favour of the 6th respondent Sakthivel. Under the said will the suit property in S.No.47/1, measuring 6.40 acres in Bellanpatti Village, Dharapuram



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Taluk was bequeathed in favour of the 6th respondent. The said will is also produced before the trial Court in O.S.No.169/1991 on the file of the District Munsif Court, Dharapuram.

3.1.The suit property was settled in favour of Palanathal through settlement deed dated 18.10.1979 and she died on 28.09.1990. The petitioner/appellant filed the suit in O.S.No.169/1991 claiming right over the suit property under the alleged will executed by Palanathal dated 31.03.1990. The Courts below dismissed the suit. Against which, the present second appeal has been preferred.

3.2.The further submission of the respondents is that after the demise of said Palanathal, the defendants 1 and 2 became the absolute owners of the property. the defendants 1 and 2 have executed the registered will dated 6.3.1991 and bequeathed the suit property in favour of the 6th respondent in the appeal. Hence, the 6th respondent became the absolute owner of the property and he alone is entitled to the suit property. The proposed parties are children of deceased 5th respondent and they have no right over the suit property and the 6th respondent Sakthivel alone is entitled to the suit property. Therefore, the petition is liable to be dismissed.



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4. This Court heard both sides and perused the records. Upon hearing both sides, the point for determination in this petition is as to whether this petition is to be allowed or not?

Points:

5. This petition has been filed by petitioner to condone the delay of 1473 days in filing the petition to set aside the abatement and to implead the legal heirs of deceased 5th respondent. The petitioner contention is that he preferred the main appeal as against the decree and judgement passed by the Courts below. During the pendency of the appeal, 5th respondent namely subbalakshmi died and his previous counsel died long back and due to his demise, he was unable to contact his previous counsel. In the mean time, the 5th respondent died on 12.10.2022. Due to above said reasons, the appeal against the 5th respondent was abated and hence this petition is filed.

6. The 5th respondent contention is that already the Courts below passed the judgment in favour of the 6th respondent and he is entitled the property byway of registered will, thereby the legal heirs of the deceased Subbalakshmi/5th respondent are not proper and necessary parties to this proceedings. It is admitted fact that the deceased Subbalakshmi/5th respondent died during the pendency of



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the appeal and in order to decide the matter effectively, all the legal heirs of the deceased Subbalakshmi/5th respondent are proper and necessary parties. Since the 5th respondent in the main appeal died during the pendency of the appeal, it is necessary to implead the legal heirs of the deceased and thereby, the petitioner filed this petition to condone the delay 1473 days, reasons for the delay is due to death of the previous counsel for the petitioner. Having satisfied with the above said reasons stated by the petitioner/appellant, this Court feels it appropriate to allow this application to meet the ends of justice. Accordingly, this petition will be allowed on payment of cost of Rs. 1000/- each to respondents 6, 7 to 9 on or before 14.12.2023.

7. Call on 15.12.2023.

08.12.2023

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