



PBEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction



Tuesday, the Twentieth day of June Two Thousand and Twenty Three

PRESENT

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The Hon`ble Mr.Justice P.VELMURUGAN

CMP(MD) . No.4875 of 2023

in

SA(MD) . No.930 of 2008

1. M.Selvam(Died) ,

2. Karuppayee,

3.Chandra

4.Kayalvizhi

5.Kanimozhi

6.Kalaivani

7.S.Kavirajan

... Petitioner/Respondent

Vs

Mariappan

... Respondent/Appellant

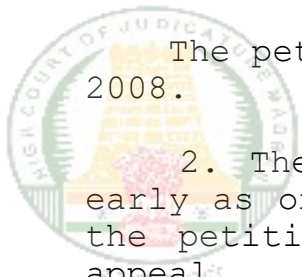
Prayer in CMP:-

This civil miscellaneous petition filed under order 41 Rule (21) of CPC, to Rehear the Second Appeal in SA(MD).No.930 2008 and thus render justice.

Prayer in SA:

Second Appeal filed under section 100 of C P C, Against the Judgment and decree of the Sub Court, Periyakulam, dated 05.10.2007 made in Appeal Suit No.30 of 2003 reversing the Judgment and decree of the Court of the District Munisif Court, Andipatti maed in Original Suit No 38 of 2002, dated 31.01.2003

ORDER:- This civil miscellaneous petition 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 Ms. A.Aruljeniper, Advocate for the Petitioner and the Respondent 2 to 7 has not appear either in person or on Addovate, this Court made the following order:



The petition is filed to re-hear the appeal in S.A(MD)No.930 of 2008.



2. The final Judgment was passed in S.A(MD)No.930 of 2008 as early as on 30.09.2021. Without filing the condone delay petition, the petitioners have directly filed this petition to re-hear the appeal.

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3. A perusal of records shows that the respondent in the Second Appeal was served with notice on 29.11.2008. However, he has neither chosen to appear nor chosen to engage a counsel. Therefore, the appellant in the appeal was heard and the appeal was disposed on merits. During his life time, the respondent in the appeal did not challenge the Judgment passed in the appeal. Subsequently, he passed away.

4. Now, the legal representatives of the respondent in the appeal have filed this petition. According to the third petitioner, her husband, who is the respondent in the appeal was not served with notice in respect of the present Second Appeal. Further, her husband never informed her about the pendency of the Second Appeal. Therefore, the petitioners seeks to rehear the Second Appeal.

5. According to the affidavit filed in support of this petition, the deceased Selvam and his wife, the third petitioner were living together. However, the third petitioner claims that her husband did not receive any notice and she also has no knowledge about the pendency of the Second Appeal, which are unbelievable. The reasons stated in the accompanying affidavit are not satisfactory. The petitioners have not approached this Court with clean hands. Further, the petitioners have filed this petition after a lapse of nearly two years even without filing condone delay petition. Therefore, this petition is dismissed.

Sd/-

Assistant Registrar(CS-II)

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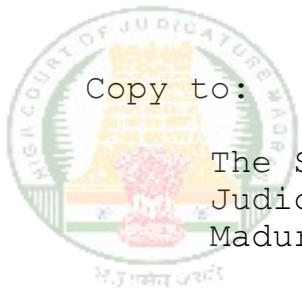
/07/2023

Sub Assistant Registrar(CS)

TO

1. The Subordinate judge Periyakulam,Theni district

2.The DISTRICT MUNSIF COURT , ANDIPATTI



Copy to:

The Section Officer,
Judicial Section,
Madurai Bench of Madras High Court, Madurai



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ORDER DATED : 20/06/2023

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ORDER

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CMP(MD) . No.4875 of 2023
Giving direction and etc.
as stated within.

KB(10.07.2023) 3P 4C