



WEB COPY



C.M.P. Nos.13556, 13473 & 13557 of 2021
in S.A.No.1148 of 2009

C.M.P.Nos.13556, 13473 & 13557 of 2021

in

S.A. No. 1148 of 2009

T.V. THAMILSELVI, J.

These Civil Miscellaneous Petitions have been filed seeking to condone the delay of 2899 days in filing the petition to set aside the abatement, to set aside the abatement caused due to the death of 2nd appellant, and to bring on record the proposed respondents 6 to 7 herein as legal representatives of deceased 2nd appellant.

2. Mrs.V.Srimathi, learned counsel for petitioners/appellants submitted that pending appeal, 2nd appellant died on 17.11.2011. He would submit that they were not aware of the proceedings to implead his legal heirs and also due to lack of communication, they have not informed about the death of 2nd appellant and it is not due to any willful negligence on their part. However, the delay of 2899 days arose and the delay is neither willful nor wanton. Hence, he has filed the above petitions.

3. Mr.G.Perumal, learned counsel for respondents 1 to 5 appeared and submitted that the first appeal in A.S.No. 70 of 2008 was disposed of on 30.04.2009 and challenging the same, the appellants have preferred the Second Appeal in the year of 2009. Thereafter, they failed to proceed with



C.M.P. Nos.13556, 13473 & 13557 of 2021
in S.A.No.1148 of 2009

the main appeal. Now, they are taking steps to implead legal heirs of 2nd appellant with the delay of 2899 days without assigning any proper reasons for the delay. In fact, in the year of 2009 itself, they have preferred the Second Appeal and during the year of 2011, the 2nd appellant died, but nearly about 10 years later, they are taking steps to implead legal heirs of 2nd appellant. Hence, he raised strong objections.

4. On perusal of records, it reveals that the appellants are plaintiffs in the suit claiming share in the property of father through first wife. The respondents are legal heirs of second wife. As on date, they are enjoying the property. However, the Second Appeal was filed by the appellants contenting that the property belong to 1st appellant husband Krishnan by ancestral, but according to the respondents, the property is a self-acquired property of Krishnan, who executed a Will and settled the same in favour of second wife after obtaining divorce from first wife. But, the both courts below concurrently denied the plaintiffs claim, against which, the present Second Appeal was preferred. However, as on date, the respondents are enjoying the property, but the Will is not proved before the courts below relied on by the respondents.



C.M.P. Nos.13556, 13473 & 13557 of 2021
in S.A.No.1148 of 2009

WEB COPY

5. Considering the facts and circumstances and the fact that there is a delay on the part of appellants in impleading legal heirs of 2nd appellant and the fact that since they are fighting before the courts below from the year of 2002 and in order to avoid further complications as well as all the appellants are illiterate and 1st appellant is a Widow lady, having lack of knowledge about the proceedings to implead his legal heirs and also the fact that being satisfied with the reasons assigned in the affidavit, all the petitions are allowed on condition that the petitioners shall pay a cost of Rs.10,000/- payable to the learned counsel for respondents within a period of one week from the date of receipt of copy of this order. On such payment of cost, the proposed legal representatives of the 2nd appellant are impleaded as respondents 6 and 7 in the above Second Appeal and the Registry is directed to carry out the necessary amendment in the cause title.

6. Post the matter on 11.09.2024.

20.08.2024

rpp



WEB COPY



C.M.P. Nos.13556, 13473 & 13557 of 2021
in S.A.No.1148 of 2009

T.V.THAMILSELVI, J.

rpp

C.M.P.Nos. 13556, 13473 & 13557 of 2021
in
S.A. No. 1148 of 2009

20.08.2024