



CMP(MD)No.14607 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Tuesday, the Twenty Third day of January Two Thousand and Twenty Four
PRESENT:

The Hon`ble Mr.Justice MUMMINENI SUDHEER KUMAR
CMP(MD)No.14607 of 2023

in
S.A. No.2005 of 2003

1.Meenambal(Died)
2.Pitchayyammal
3.Palaniammal
4.Janakiraman
5.Kalpana
6.Selvi
7.Doss
8.Revathi ... Petitioners/ Appellant.

Vs

1.Pandurengan
2.Kalia Pillai
3.G.Thangarasu Nadar
4.Rengarajan
5.Kalimuthu
6.Vanaja
7.Krishnan ... Respondents/ Respondents.

(Respondents 8 to 14 herein are transposed
as petitioners 2 to 8 vide court order
dated 23/01/2024 made in CMP(MD)nO.14607 of 2023)



CMP(MD)No.14607 of 2023

Prayer in CMP(MD)No.14607 of 2023:-

Civil Miscellaneous Petition filed under Order 41 Rule 19 r/w Section 151 of C.P.C., to set aside the order of dismissal for default passed in the appeal by this Court dated 10-03-2021 and restore the appeal on the file of this Court and thus render justice.

Prayer in S.A.No.2005 of 2003:

Second Appeal file under Section 100 of C.P.C., against the decree and judgment of the Additional District Judge cum Fast Track Court-I, Thanjavur, in A.S. No.130 of 2001, dated 18.06.2003, reversing the decree and judgment of the Principal Subordinate Judge, Thanjavur, passed in O.S.No.250 of 1995, dated 24/07/2001.

ORDER:- This Petition coming on for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.M.R.S.Prabhu, Advocate for the Petitioner and of Mr.G.Karnan, Advocate for the first respondent, this Court made the following order:

This petition is filed seeking to set aside the order of dismissal passed in the main appeal for default by order, dated 10.03.2021. This application was filed on the very same date on which the main Second Appeal was dismissed for default. However, the said petition was pending for quiet some time and was numbered only in the year 2023 on representation.

2. The relevant papers were already served on the learned counsel appearing

for the respondents as early as in the year 2021, but, no counter affidavit is filed as



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on date. This matter earlier came up for hearing on 10.01.2023 and the same was adjourned at the instance of the learned counsel for the petitioner for taking appropriate steps in view of the demise of the petitioner, after filing this application.

3. Today, when the matter is taken up for hearing, the learned counsel appearing for the respondents submitted that the petitioner played fraud on this Court on the ground that though the restoration petition was filed by the petitioner on 10.03.2021, the same was represented on 20.10.2023 after the demise of the petitioner herein without disclosing the factum of the death of the petitioner.

4. This Court having carefully considered the said submission made by the respondents, does not find any merit in the same, as the representation was done by the counsel for the petitioner without having the knowledge about the death of the sole petitioner. Hence, the question of playing fraud does not arise.

5. It is also further brought to the notice of this Court by the learned counsel for the petitioner that the respondents 8 to 14 herein are the legal representatives of the deceased petitioner / appellant and also submitted that appropriate application was already filed to transpose the respondents 8 to 14 herein as appellants 2 to 8 in



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the main Second Appeal, but the same was returned. The learned counsel appearing for the respondents not disputed about the respondents 8 to 14 herein being the legal representatives of the appellant.

6. As there is no dispute that the respondents 8 to 14 herein are the LR's of the deceased petitioner / appellant, this Court is of the considered view that the formality of bringing on record the LR's of the deceased appellant can be done by this Court suo motu and accordingly, the respondents 8 to 14 in the appeal are transposed as appellants 2 to 8 in the main Second Appeal.

7. Registry is directed to carry out necessary amendment in both petition as well as the Second Appeal and accordingly, this Second Appeal is restored on the file of this Court.

Sd/-

Assistant Registrar (A.D.II)

// True Copy //

05/02/2024

Sub Assistant Registrar
(CS-I / II / III / IV)

trp



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TO
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- 1.The Additional District Judge cum Fast Track Court-I, Thanjavur.
- 2.The Principal Subordinate Judge, Thanjavur.

Copy to: The Section Officer, Judicial Section,
Madurai Bench of Madras High Court, Madurai.

ORDER DATED : 23/01/2024

Next Hearing : 06/02/2024

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RESTORATION ORDER

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in

S.A. No.2005 of 2003

Giving direction and etc.
as stated within.

RD(05/02/2024) 5P / 4C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023.