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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Friday, the Ninth day of February Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice MUMMINENI SUDHEER KUMAR

CMP(MD).No.573 of 2019

in

SA.NO.325 of 1999

and

CMP(MD).No.574 of 2019

in

SA.NO.326 of 1999

CMP(MD).No.573 of 2019 in SA.NO.325 of 1999 :

Sundarabai

... Petitioner/ Appellant

..Vs..

- 1 C.Thankappan Nadar
- 2 Ponnian Nadar
- 3 Rani
- 4 Kumar
- 5 Nagarajan (Court Guardian V.Rampatsingh)
- 6 Thasamma
- 7 Rajam
- 8 Lalithabai
- 9 Christalbai
- 10 John Bright
- 11 Kanakam
- 12 Nagomi

...Respondents/ Respondents



Prayer in CMP(MD).No.573 of 2019 :

Civil Miscellaneous petition filed under order 41 Rule 19 of CPC to restore the SA.No.325 of 1999 on the file of this Court, which was dismissed for default on 15.11.2018.

Prayer in SA.No.325 of 1999:

Second Appeal filed Under Section 100 of C.P.C against the Judgment and decree passed in A.S.No.35 of 1991 dated 12.10.1995 on the file of the Court of District Judge, Kanyakumari confirming the judgment and decree passed in O.S.No.12 of 1984 dated 22.01.1991 on the file of Sub Court, Kuzhithurai.

CMP(MD).No.574 of 2019 in SA.NO.326 of 1999 :

Sundarabai

... Petitioner/Appellant

..Vs..

- 1 C.Thankappan (died)
- 2 Mudiappan
- 3 Thankappan
- 4 Nagappan
- 5 Ponnian Nadar
- 6 Thasamma
- 7 Kumar
- 8 Nagarajan

(Court Guardian V.Rampalsingh)

(Respondents 5 to 8 are brought on record as LRS of the deceased 1st Respondent vide Court order dated 25.08.2023 made in CMP(MD).Nos.4944 to 4946/2023 in SA.No.326 of 1999 by KRJ)

... Respondents/Respondents

Prayer :-

Civil Miscellaneous petition filed under Order 41, Rule 19 of CPC to set aside and restore the above application in CMP(MD).No.574 of 2019 in SA.No.326 of 1999 which was dismissed for default by this Court by common order dated 21-11-2019.

Prayer in CMP(MD).No.574 of 2019 :

Civil Miscellaneous petition filed under order 41 Rule 19 of CPC to restore the SA.No.326 of 1999 on the file of this Court, which was dismissed for default on 15.11.2018.



Prayer in SA.No.326 of 1999:

Second Appeal filed Under Section 100 of C.P.C against the Judgment and decree passed in A.S.No.36 of 1991 dated 12.10.1995 on the file of the Court of District Judge, Kanyakumari confirming the judgment and decree passed in O.S.No.15 of 1983 dated 22.01.1991 on the file of Sub Court, Kuzhithurai.

ORDER:- These Civil Miscellaneous Petitions are 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 Mr. M.P.Senthil, Advocate for the Petitioner, in both cases and Mr.P.Thiyagarajan, Advocate for RR2,7 to 12 in CMP(MD) 573/2019, this Court made the following order:

These petitions are filed to restore S.A.Nos.325 and 326 of 1999, which were dismissed for default on 15.11.2008.

2. No counter affidavit is filed by the respondents.

3. Though the Second Appeal was originally filed at Principal Seat at Madras, the same was transferred establishment of Madurai Bench and due to which, there was a communication gap between the counsel and the petitioners and hence, appropriate steps are not taken when the matter was listed on 21.11.2019.

3. Considering the said fact this Court is inclined to give an opportunity to the petitioners to contest the matters on merits.

4. Accordingly, these petitions are ordered and the Second Appeals are restored on the file of this Court by duly setting aside the order, dated 15.11.2018.

Sd/-

Assistant Registrar(CS II)

// True Copy //

/03/2024

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



1. The District Judge, Kanyakumari @ Nagercoil
2. The Subordinate Judge, Kuzhithurai.

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

ORDER DATED : 09/02/2024

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ORDER

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CMP(MD).No.573 of 2019

in

SA.NO.325 of 1999

and

CMP(MD).No.574 of 2019

in

SA.No.326 of 1999

Giving direction and etc.

as stated within.

SSA (15.03.2024) 4P/ 4C

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