



CMP(MD) No.7904 of 2024

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

Monday, the Twenty Eighth day of October Two Thousand and Twenty Four

PRESENT

The HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

CMP(MD) No.7904 of 2024

in

MP(MD) No.1 of 2013

in

SA No.1549 of 2000

1 DINAKARAPANDIAN

2 POOMAYILTHAI (DIED)

3 AKILANDESWARI

4 CHANDRAKALA

5 SIRIYA ALAGU PANDIAN

... Petitioners / Petitioners

Vs

1 N.GANDHI MEENAL

2 NATARAJA THEVAR (DIED)

3 G.DHANALAKSHMI (DIED)

4 T.SATHYAMOORTHY

5 T.PANDI (DIED)

... Respondents / Appellants



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6 B.INDURANI

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7 MINOR.UKKIRAPANDIAN

8 MUTHURATHINAM

9 MINOR NAGAJOTHI

10 MINOR DEIVARANI

11 MINOR MANIKANDAN

12 MINOR VASUKI

13 MINOR INDURANI

(Minor respondents 7, 9 to 13 are rep by
their guardian and next friend the 6th
respondent herein)

14 E.V.NAGENDRAN (DIED)

15 PONNUSAMY THEVAR (DIED)

16 A.SIVAGNANAM (DIED)

17 MAYILVASAGAM (DIED)

18 PONNUCHAMI ALAIS
UKKIRAPANDI THEVAR (DIED)

19 KASINATHADURAI (DIED)

20 POOMALAI

21 SANKARA IYER

... Respondents / Respondents

Civil Miscellaneous Petition filed praying that in the circumstances stated



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therein and in the affidavit filed therewith the High Court may be pleased to Condone the delay of 718 days in restore the petition in M.P.(MD) 1 of 2013 in S.A.1549 of 2000, dated 03.02.2020.

Prayer in MP(MD) No.1 of 2013:

Miscellaneous Petition filed under order 1 rule 10(2) of CPC, pleaded to implead the petitioners are proposed respondents in the second appeal in SA No.1549 of 2020.

Prayer in SA No.1549 of 2000:

Second appeal file under Section 100 of CPC against the judgment and decree dated 22.06.2000 made in A.S.No.155 of 1996 on the file of Additional District Court, Ramanathapuram confirming the judgment and decree dated 25.03.1996 in O.S.No.82 of 1993 on the file of the Sub Court, Ramanathapuram.

ORDER : This civil miscellaneous petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/s.R.SELVARAJ, Advocate for the petitioners and of M/s.J.ANANDHAVALLI, Advocate on behalf of the Respondent No.1, the Court made the following order:-

This application has been filed seeking to condone the delay of 718 days to restore the petition in M.P(MD)No.1 of 2013 in S.A.No.1549 of 2000, dated 03.02.2020.

2. This application has been filed by one Siriya Alagu Pandian, S/o.Late.U.Thirunavukarasu residing at Door No.15/18, Agraharam Street, Thiruthangal, Sivakasi Taluk, Virudhunagar District stating that he is the 5th respondent herein. His father Late.U.Thirunavukarasu, S/o.Ukkirapandia Thevar, born through Late.Somuammal and he also the cousin brother of late



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U.Muthuramalinga Thevar. The first respondent namely Indurani, who is the legal heir of Late.Muthuramalingam Thevar, had filed the suit against Gandhi Meenal and others. The said suit was decreed in her favour. Aggrieved over the said judgment and decree, Gandhi Meenal and others were filed first appeal in A.S.No.155/1996 before the Additional District Court, Ramnad and the said appeal was dismissed. Aggrieved against the said judgment and decree, they have preferred the second appeal before this Court. The petitioners came to know about the pendency of the second appeal only during the first week of February 2013. The first respondent had started claiming that she is the exclusive owner of the suit property and that right has to be decided by the Courts below. Further, she has got every right to alienate the suit properties. Late. Ukkarapandi Thevar's legal heirs has got share in the suit property. Since Late.Muthuramalingam Thevar, our paternal uncle and since he died as a bachelor, they are the legal heirs of Late.Muthuramalingam Thevar and hence, the alienation as if Indurani is a legal heir of Late.Muthuramalingam Thevar has not at all base. Further after the demise of their father, now they are all entertain to the shares which his father had in the suit properties. Therefore, it is absolutely necessary that they should be arrayed as a proposed respondent in the second appeal. Since the first respondent herein sought for declaration in respect of the suit property as coparcener. They are proper party



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to the second appeal, they will be put to irreparable loss and hardship and also the respondents in the second appeal may not have valid and tenable objection for the same.

3. He further stated that the dismissal caused is not wanton or willful and beyond his control. He is not negligent or indifferent in the conduct of the proceedings unless the order of dismissal passed on 03.02.2020 in the above appeal is set aside and the appeal is restored to the file of this Court, he will be seriously and irreparably prejudiced. Hence, he prays for allowing this application.

4. Mrs.B.Indurani has filed a counter affidavit denying all the averments made in the affidavit. She stated that the subject matter in issue in the second appeal is totally different from the alleged claim made by the petitioners in their impleading petition. Only realizing that this petition for impleading would not succeed they allowed to be dismissed for default by this Court on 03.03.2021. M.P.(MD)No.2013 was filed by the petitioners mainly contending that their father, Thirunavukarasu Thevar was a cousin brother of late Muthuramalinga Thevar. They presented M.P.No.1 of 2013 before this Court on 15.02.2013. After filing the above M.P, on 08.07.2013 they filed a suit for partition before the Principal District Court, Virudhunagar. The suit was transferred to Additional District Court, Virudhunagar and numbered as O.S.No.27 of 2018. The said suit was dismissed on 29.04.2024.



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The learned Judge clearly held that they are not legal heirs of Ukkirapandi Thevar.

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Therefore, the petitioner have no legal right in M.P.No.1 of 2013. Hence, prays for dismissing the application.

5. The first respondent, namely, Gandhi Meenal filed a counter affidavit and stating that the respondents 1 to 8 in the appeal filed the suit in O.S.No.82 of 1993 seeking for declaration of title, recovery of possession of 'B' schedule property and for permanent injunction in respect of the suit property. The claim of the plaintiffs in the suit is that they are legal heirs of Muthuramalinga Thevar, who died on 29.10.1963 as bachelor. Muthuramalinga Thevar's father is Ukkirapandi Thevar and mother is Indirani Ammal. Muthuramalinga Thevar has sister by name Janaki Ammal. Ukkirapandi Thevar had another wife namely Nagammal, daughter namely Indirani. Plaintiffs are the grand-daughters of the Indirani. The petitioner have filed M.P(MD)No.1 of 2013 seeking to implead them as proper respondents in the second appeal. The claim of the petitioners is that they are the sons of Thirunavukkarasu, who is the son of Ukkirapandi Thevar through his wife Somu Ammal. They pleaded that on coming to know about the second appeal in the year 2013, they filed the application. The said application was dismissed for default on 03.02.2020. The present application has been filed for restoration and set aside the order of dismissal dated 03.02.2020. There is no reason stated by the petitioner for



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condoning the huge delay of 1064 days i.e., more than 4 years.

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6. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

7. It is seen from the records that the second appeal is filed by the appellants in the first appeal. The petitioners in the above C.M.P., filed M.P(MD)No.1 of 2013 seeking to implead them as proper respondent in the above appeal. The claim of the petitioners is that they are the sons of Thirunavukkarasu, who is the son of Ukkirapandi Thevar through his wife Somu Ammal. The petitioners have filed M.P (MD)No.1 of 2013 on 15.02.2013. After filing the above MP, on 08.07.2013 they filed a suit for partition before the Principal District Court, Virudhunagar. The suit was transferred to Additional District Court, Virudhunagar and numbered as O.S.No.27 of 2018. The contention in the suit was the very contention raised in M.P.No.1 of 2013, that is, their father Thirunavukkarasu Thevar was a cousin brother of Muthuramalinga Thevar and therefore, on the ground they claimed half share in the suit properties, which are identical to the properties concerned in S.A.No.1549 of 2000. They had impleaded 11 defendants. She was the 7th defendant in the suit and in the capacity she alone contested the suit stating that the plaintiffs in the suit are not at all any way related to the family of Muthuramalinga Thevar. After considering the pleadings and evidence by judgment dated 29.04.2024 suit filed by



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the petitioners was dismissed by the learned Assistant District Judge, Virudhunagar.

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The learned Judge clearly held that they are not legal heirs of Ukkirapandi Thevar.

Therefore, the petitioner have no legal right in M.P(MD).No.2013. The petitioner

has stated that their counsel was aged man and therefore, they could not appear.

This contention itself shows that the petitioner were aware of the order of the

dismissal of M.P(MD)No.1 of 2013, dated 03.02.2021 itself but deliberately they have

not chosen to file an application in time. Purposefully, with the view to drag on the

proceedings, this application has been filed. There is no averment in the affidavit

that how they came to know about the second appeal and why they are not taken

any steps to implead themselves in the suit or in the first appeal assuming their right

in the suit property.

8. In view of the above reasons, this Court is not inclined to allow the condone delay petition. Accordingly, this petition is dismissed.

sd/-
28/10/2024

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/12/2024
Sub-Assistant Registrar
(C.S.I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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To **மேலும் உரிமை**

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1.The Additional District Judge,
Ramanathapuram.

2.The Subordinate Judge,
Ramanathapuram.

+1 CC to M/s.S.VELLAICHAMY, Advocate (SR-13276[I] dated 28/10/2024)

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-13325[I] dated 29/10/2024)

ORDER
IN
CMP(MD) No.7904 of 2024
in
MP(MD) No.1 of 2013
in
SA No.1549 of 2000
Date :28/10/2024

ED/ GSV /SAR- (04/12/2024) 9P / 5C

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