



CMP(MD). No.2935 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

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

PRESENT

The Hon`ble Mr.Justice MUMMINENI SUDHEER KUMAR

CMP(MD). Nos.2935, 9593, 8499 and 7683 of 2018
in
S.A.No.75 of 2001

1. Thiayagarajan
2. Subramanian

... Petitioners in all CMPs

Vs

1. Singaram Chettiyar @ Muthuraman
2. Vijaya
3. Poonnamaravathy Town Panchayat
Rep by its Executive Officer at
Ponamaravathi,
Pudukkottai District.
4. Janaki @ Nachammai(Died)

... Respondents No. 1 to 4 in
CMP(MD). Nos.2935, 9593
and 8499 and 7683 of 2018

5. Alamelu

... Proposed Respondent No. 5 in
CMP(MD). No.7683 of 2018

6. S.Palaniappan

... Proposed Respondents No.6 in
CMP(MD). No.7683 of 2018



CMP(MD). No.2935 of 2018

Prayer in CMP(MD). No.2935 of 2018:-

This petition filed under Section 5 of Limitation Act, to condone the delay of 3605 days in filing the above set aside petition in order dated 01.04.2008 made in S.A.No.75 of 2001.

Prayer in CMP(MD). No.9593 of 2018:-

This petition filed under Section 22 Rule 10 and 151 of C.P.C., to grant leave to the petitioners to file this set aside petition in order dated 01.04.2008 made in S.A.No.75 of 2001.

Prayer in CMP(MD). No.8499 of 2018:-

This petition filed under Order 42 Rule 19 and Rule 151 of C.P.C., to set aside the order dated 01.04.2008 made in S.A.No.75 of 2001.

Prayer in CMP(MD). No.7683 of 2018:-

This petition filed under Order 22 Rule(3) of C.P.C., to bring on record the LRS of the 1st respondent/ Proposed Respondents 5 and 6 herein and rank them as respondents 5 and 6 in S.A.No.75 of 2001.

Prayer in S.A. No.75 of 2001:-

This Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 09.08.1999 passed in A.S.No.66 of 1998 by the Additional District Judge cum Chief Judicial Magistrate, Pudukkottai in confirming the judgment and decree dated 15.11.1996 passed in O.S.No.190 of 1995 by the District Munsif, Thirumayam.

ORDER:- This Petitions 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.I.Vel Pradeep, Advocate for the Petitioner and of Mr.V.Om Prakash, Advocate for the respondent No. 3 and the second respondent did not appear either in person or through Advocate,, this Court made the following order:



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The subject matter involved in the main Second Appeal is with regard to pathway, which is claimed to be the property belonging to the Ponnamaravathi Town Panchayat.

2. According to the petitioners herein, who are legal representatives of the deceased plaintiff, the said pathway is being used by the plaintiff in the original suit as well as the defendants and others for the past more than 100 years. But, the defendant No.1 in the suit obstructed the petitioner / plaintiff from using the said pathway. Thereby, the suit in O.S.No.10 of 1993 came to be filed on the file of the District Munsif, Pudukkottai and the said suit was decreed and the same was confirmed by the lower Appellate Court. However, the said ground findings recorded by the Courts below are reversed by the learned Single Judge of this Court by allowing the Second Appeal No.75 of 2001, dated 01.04.2008.

3. The petitioners herein who are the legal representatives of the deceased plaintiff, who was arrayed as respondent No.1 in the Second Appeal came before this Court after a decade complaining that the Second Appeal was allowed without hearing the 1st respondent in the year 2008 and the first respondent passed away in



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the year 2014. According to the petitioners, they came to know about the disposal of the Second Appeal only in the year 2014. Thereafter, they have come forward with various applications seeking condonation of delay, to set aside the abatement and to allow them to come on record and to set aside the ex parte order, dated 01.04.2008 passed in the Second Appeal No.75 of 2001.

4. This Court having gone through the entire records including the pleadings and the Judgment, dated 01.04.2008 passed by the learned Single Judge of this Court, is of the considered view that the claim of the petitioners herein over the pathway is that the same belongs to the Ponnamaravathi Town Panchayat, which is occupied by the first defendant and their legal representatives for the purpose of running a school. If that be the case, it is for the said Panchayat to take appropriate steps for protecting its property. If at all the said Panchayat failed to take such steps to protect the property, it is open to the petitioners to approach the concerned higher authorities seeking the relief of protecting pathway. If no such steps are taken thereon, it is always open to the petitioners to agitate the same before the jurisdictional Court under Article 226 of the Constitution of India.

5. Keeping in view of this fact and that the litigation relates back to the year 1993 and that the Second Appeal has been allowed on 01.04.2008 and the same is



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sought to be reopened by seeking condonation of delay of 3605 days, and also taking into consideration the trivial issue involved in this matter, this Court is not inclined to reopen the Second Appeal at this stage. Further, the respondent Nos.5 and 6, who are the legal representatives of the deceased 1st respondent are also not served with notice, so far.

6. Taking into consideration the entire facts, all the applications are closed leaving it open to the petitioners to agitate their grievance, if the same still subsists with regard to subject pathway belonging to the Ponnamaravathy Town Panchayat by initiating appropriate steps as indicted above.

Sd/-

Assistant Registrar(CS II)

// True Copy //

/02/2024

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

Copy to:

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

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ORDER DATED : 08/01/2024

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ORDER

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CMP(MD). Nos.2935, 9593, 8499
and 7683 of 2018

in

S.A.No.75 of 2001

Giving direction and etc.
as stated within.

SSA/31.01.2024 6P 2C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023