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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction**

Wednesday, the Seventeenth day of April Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice S.SOUNTHAR

CMP(MD). No.6954 of 2023

in

SA.No.1694 of 1999

Irulappan (Died)

... / Sole Appellant

1.Aarayee Ammal

2. Irulayee

3. I. Balamurugan

... Petitioner 1 to 3/Proposed
Appellants 2,3 and 4

..Vs..

1 Chitravelu

2 Muthukaruppan

3 Periyasamy

4 Irulappan

... Respondents/Respondents

Prayer :-

Civil Miscellaneous Petition filed Under Order 41 Rule 19 of C.P.C to set aside the dismissal order dated 08.11.2011 passed in the above Second Appeal No.1694 of 1999 and restore the same to the file of this Court.



Pryar in SA.No.1694 of 1999:

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Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 06.11.1998 passed in A.S.No.51 of 1998 by the Principal District Judge at Srivilliputhur in confirming the Judgment and Decree dated 10.02.1998 passed in O.S.No.133 of 1996 on the file of the Sub Court, Viruthunagar.

ORDER:- This Civil Miscellaneous Petition is 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.V.R.Venkatesan, Advocate for the Petitioner and none having appeared for the Respondents either in person or through Counsel, this Court made the following order:

This petition is filed to set aside the dismissal order dated 08.11.2011 passed in the second appeal in S.A.No.1694 of 1999 and restore the same to the file.

2.It is seen from the records that the second appeal was dismissed as against the respondents 1 and 4 by order dated 05.04.2011 for failure of the appellant to pay batta and thereafter, the second appeal was listed on 08.11.2011. On that day, there was no representation for the appellant. Hence, the second appeal was dismissed as



3. Now, the petitioners filed the instant application to restore the second appeal by setting aside the order dated 08.11.2011. However, no petition has been filed to set aside the order dated 05.04.2011 dismissing the second appeal as against the respondents 1 and 4.

4. The second appeal is arising out of a suit for partition. When the second appeal is dismissed against the respondents 1 and 4 by order dated 05.04.2011 and the same has attained finality, the petitioners are not entitled to seek restoration of second appeal as against the respondents 2 and 3. Further, it is also seen from the records that the respondents 1 to 3 were reported dead as early as 06.02.2024. Till date, no steps have been taken to bring on record the legal representatives of the deceased respondents 1 to 3. In these circumstances, no purpose will be served by keeping this petition pending. Hence, this Civil Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/06/2024

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

TO

1. The Principal District Judge , Viruthunagar at Srivilliputhur.

2. The Sub Judge, Viruthunagar.



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ORDER DATED : 17/04/2024

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ORDER

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**CMP(MD). No.6954 of 2023
in
SA.No.1694 of 1999**

**Giving direction and etc.
as stated within.**

RE (06.06.2024) 4P/ 3C

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