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CMP NO. 5907 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-04-2025

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THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

CMP NO. 5907 of 2025

in

SA.No.1195 of 2003

V.S.Harikumar
S/o. V.S. Suresh Kumar, No.7/ A.17, II Street,
Venus Colony, Alwarpet, Chennai - 18.

Appellant(s)

Vs

M/S.Amalgamations Ltd.,
2. M/s. Simpson and Co. Ltd, Both Respondents
1 and 2 having office at No.202, Anna Salai,
Chennai - 600002. and 5 Others

Respondent(s)

For Appellant(s):

P.Dinesh Kumar

For Respondent(s):

M/s.T.V.Krishnamachari

ORDER

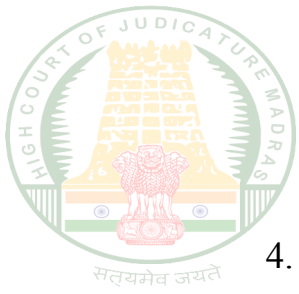
This Petition has been filed to readmit the above appeal in
S.A.NO.1195 of 2003 which was dismissed for non-prosecution on
02.03.2018.



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2. Heard the learned counsel for the appellant and learned counsel for the respondents 1 & 2 appeared. The material available on record has been perused.

3. The learned counsel for the petitioner submitted that the earlier counsel who was contesting the case passed away. Due to a lack of communication, they were unable to follow the proceedings. When the appeal was listed on 02.03.2018, it was dismissed for non-prosecution by this Court. After coming to know about the demise of the earlier counsel, the petitioner made enquiries and came to know that the appeal had been dismissed for default. In fact, they had filed the suit in 1982, and the respondents 1 and 2 had filed a counter-suit. The subject matter of the dispute is the usage of a pathway, which, according to the petitioner, is the only access route to their residence. Therefore, he submit that he has valid defence to prove his case. Hence, the petitioner prays for the restoration of the appeal.



4. The learned counsel for respondents 1 and 2 appeared and raised strong objections, stating that there was collusion with a person who had sold his property in 2007. Thereafter, the second appeal was abandoned. Now, in order to drag on the proceedings, they have come forward with this application to readmit the appeal, which, according to the counsel, is a clear case of abusing the process of law. He also contended that the other appellants sold their property in 2011 and are not inclined to proceed with the second appeal. After a long lapse of time, they have now come forward with the appeal to readmit it. The reason stated by the petitioner is not acceptable. Further, the counsel who is said to have died actually passed away in 2021, and the explanation given is therefore incorrect. Hence, he prays for the dismissal of the petition as no merit.

5. On considering the submissions from both sides, it is noted that the original suit was filed by respondents 1 and 2 in the year 1982. Even after all these years, the matter has not reached any finality. Now the parties involved are also senior citizens. If an opportunity is not given, it would cause considerable hardship to them. Since the subject matter of the issue is a pathway, and according to the petitioner it is the only route to reach their



residence, the matter deserves reconsideration. On the other hand, the contesting respondents/plaintiffs contend that it is a private pathway to which the petitioners/defendants have no right or title. If an opportunity is denied, the petitioners may be deprived of their right to defend the case. Therefore, this Court is inclined to re-admit the appeal.

6. Accordingly, this Civil Miscellaneous Petition is allowed.

7. Post the case along with CMP Nos. 6910 & 6915 of 2022 on 11.06.2025.

25-04-2025

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To

1. The Subordinate Court, Poonamallee.
2. The Additional District Munsif, Poonamallee.



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T.V.THAMILSELVI, J.

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