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CMA.No.686 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 10.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.686 of 2025

Amarah-Desh (died)
rep by his LRs 1 to 4 herein

1. Amarah Desh Djiya, F/A 61 years
2. Amarah-Desh Radrigue Guiry, M/A 45 years
3. Amarah-Desh Ludovie-Charles, M/A 43 years
- 4 Amarah-Desh Brigitte Andjalavady, M/A 39 years ... Appellants

Vs.

Pouchepaselvy dit Kastoury (died)
rep. by her LRs, respondents 1 to 4 herein

1. Ragounabaye
2. Ganeshmourthy
3. Nalinabai
4. Tyanagourour ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Order XLIII Rule 1 of CPC to set aside the order dated 11.07.2024 made in I.A.No.158 of 2017 in O.S.No.103 of 2006 on the file of the Principal District Judge, Puducherry and to allow the civil miscellaneous appeal.



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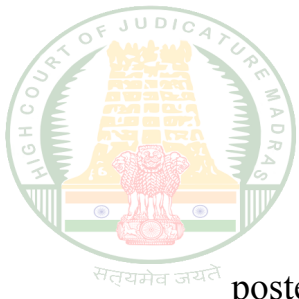
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For appellants : Mr.C.Prabakaran
for Ms.G.Djearany

JUDGMENT

This civil miscellaneous appeal has been filed challenging the order passed by the Trial Court, dismissing the application in I.A.No.158 of 2017 filed under Order IX Rule 9 of CPC seeking to set aside the order of dismissal for default.

2. It is the case of the appellants/petitioners that the husband of the first petitioner and the father of the petitioners 2 to 4 namely Amarahdesh filed a suit in O.S.No.103 of 2006 for declaration that the general power of attorney dated 10.05.1992 allegedly executed by him in favour of the defendants was nonest in the eye of law. He also sought for declaration that the partition deed dated 23.07.1982 allegedly entered into between him and the defendants and registered in the office of the jurisdiction Sub Registrar was void ab-initio and nonest in the eye of law. He also sought for passing of preliminary decree for partition and allotment of 1/6 share in his favour. The said suit was

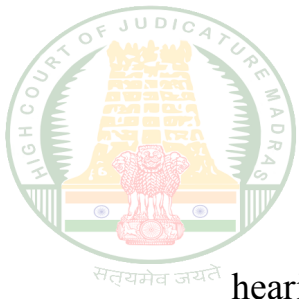


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posted for trial on 29.04.2005 and on that day, the suit was dismissed for default on the failure of the plaintiff. Thereafter, an application in I.A.No.158 of 2017 was filed by the deceased plaintiff on 21.04.2014, seeking to set aside the order of dismissal along with the petition to condone the delay in filing the said restoration petition. Pending said petition, the father of the appellants died and the appellants herein were brought on record as legal heirs of the deceased plaintiff.

3. The said application seeking to condone the delay of 2181 days in filing the petition to set aside the dismissal order was numbered as I.A.No.3570 of 2024. However, the said application was misplaced and could not be traced out. In such circumstances, the court below had taken up the I.A.No.158 of 2017 for consideration. In the affidavit filed in support of the petition to restore the suit, it was averred by the deceased plaintiff that he was suffering from severe chronic diabetes and hence, he could not appear before the court. It was also stated that at the relevant point time, he was moved out of India and he was in France for treatment and hence, he could not attend the court. The appellants have not filed any document to show that on the date of



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hearing of the suit, the petitioner/deceased was not in India and he was moved out of India for treatment. No oral and documentary evidence have been let in by the appellants to prove the alleged illness or the treatment or the absence of original plaintiff (deceased) in India at the relevant point of time. In the absence of any oral and documentary evidence to substantiate the claim of the appellants, the trial court has rightly dismissed the petition under Order IX Rule 9 and I do not find any error or irregularity in the order to interfere with the same.

4. Accordingly, this civil miscellaneous appeal is dismissed.

There shall be no order as to costs.

10.03.2025

Index : Yes/No
Speaking order : Yes/No
Neutral citation : Yes/No
mst

To

The Principal District Judge,
Puducherry.



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S.SOUNTCHAR, J.

mst

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