

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

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Thursday, the Twenty Fourth day of July Two Thousand and Twenty Five

PRESENT

THE HONOURABLE MR. JUSTICE G. ARUL MURUGAN

CMP(MD). No.16837 of 2024
in
SA(MD).No.326 of 2019

Natarajan

... Petitioner/ Appellant

Vs

1 Balamani(Died)

2 Rajamani(Died)

3 Rajendran

4 Sathyamoorthy

5 Mahalakshmi,
5th Respondent is
Brought On Record as Lr of the Deceased 2nd
Respondent Vide Court Order Dated 14.07.2025

6 Kathiresan, .

7 Kavitha,
Respondents 6 and 7 are Brought On
Record as Lrs of the Deceased 1st
Respondent Vide Common Order dated 14.07.2025

... Respondent/ Respondent



Prayer in CMP(MD). No.16837 of 2024:-

Civil Miscellaneous Petition is filed Order 41 Rule 19 of CPC r/w. 151 of CPC, to set aside the order of dismissal for default dated 10.09.2024 and restore the above Second Appeal on file of this Honourable Court.

Prayer in SA(MD).No.326 of 2019:-

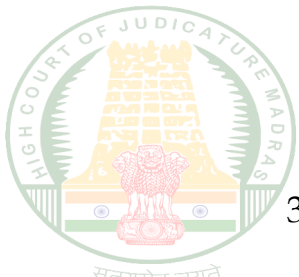
Second Appeal is filed under Section 100 of Civil Procedure Code, to call for the records and set aside the judgment and decree passed in A.S.No.42 of 2015, dated 02.12.2016, on the file of the learned Principal District Judge, Tiruchirappalli confirming the judgment and decree in O.S.No.670 of 1998, dated 27.06.2014, on the file of the I Additional Sub Court, Tiruchirappalli

ORDER:-

This Civil Miscellaneous Petition 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.K. Sivabalan, Advocate for the Petitioner and of Mr.C.Vakeeswaran Advocate For R6 & R7, this Court made the following order:

This Civil Miscellaneous Petition is filed to set aside the order of dismissal dated 10.09.2024 and restore the Second Appeal.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.



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3. It is seen from records that the learned counsel for the appellant did not appear when the appeal was listed for hearing. Therefore the Second Appeal came to be dismissed for non prosecution on 10.09.2024. Immediately on 12.09.2024 itself within two days, the appellant had filed the above petition seeking to set aside the dismissal order and restore the Second Appeal.

4. Pending Civil Miscellaneous Petition, respondents 1 and 2 died and CMP(MD)Nos.5121, 5123, 5125 and 10450 of 2025 were filed to bring on record the legal heirs of the respondents 1 and 2. In the Civil Miscellaneous Petitions, the legal heirs were the proposed respondents 5 to 7. Notice to the proposed respondents were served and pursuant to which this Court by order dated 14.07.2025, allowed those petitions and the respondents 5 to 7 were brought on record.

5. Learned counsel has entered appearance for the respondents 6 and 7. The fifth respondent who was served in the petition and have knowledge about the pending Civil Miscellaneous Petition, had not engaged any counsel. The fourth respondent has been served and the name is printed in the cause list.

6. Learned counsel appearing for the respondents 6 and 7 raised serious objections in the petition that without party, the preliminary decree has been passed and in the final decree proceedings, an advocate commissioner is appointed and



when the survey is conducted, the petitioner without any bonafide, was taking steps to restore, only to drag on the proceedings.

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7. Considering the fact that the appeal was dismissed on 10.09.2024 and immediately within two days, the petition was filed to restore, I am of the considered opinion that the appeal could be restored and the petitioner / appellant could be allowed to agitate the appeal on merits.

8. In view of the same, the Civil Miscellaneous Petition is ordered and the Second Appeal is restored to file.

Sd/-

Assistant Registrar(CS II)

// True Copy //

/ /2025

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

TO

1. The Principal District Judge,
Tiruchirappalli

2. The I Additional Sub Judge,
Tiruchirappalli



Copy to:

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

ORDER DATED : 24/07/2025

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ORDER

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CMP(MD). No.16837 of 2024

in

SA(MD).No.326 of 2019

Giving direction and etc.

as stated within.

MGJ (06.08.2025) 5P/ 4C

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