



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Wednesday, the Sixteenth day of November Two Thousand Sixteen

PRESENT

The Hon`ble Mr.Justice S.S.SUNDAR

CMP(MD) No.1665 of 2016

IN

SA(MD) No.SR17503 of 2015

1 PERUMAL,
2 C.MURUGAN,

... PETITIONERS/APPELLANTS

Vs

C.VEERA THEVAR,

... RESPONDENT/RESPONDENT

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 2498 days in preferring the Second Appeal against Decree and Judgment of Principal District Judge, Dindigul dated 17.11.2006 made in A.S.No.19 of 2005 and thus render justice.

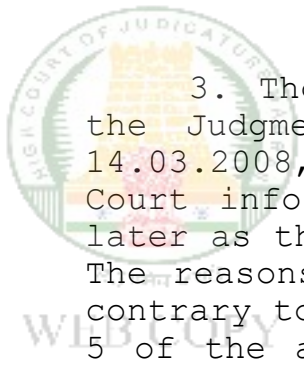
Prayer in SA(MD). SR17503/ 2015 :

The Second Appeal as against the judgment and decree in A.S.No.19 of 2005 dated 17.11.2006 on the file of Principal District Judge, Dindigul which was confirming the judgment and Decree made in O.S.No.48 of 2004 dated 19.04.2005 on the file of Additional Subordinate Judge, Dindigul.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.A.R.SETHUPATHY, Advocate for the petitioner and M/S.AJMAL ASSOCIATES, on behalf of the Respondent, the court made the following order:-

This Miscellaneous Petition is filed to condone the delay of 2498 days in filing the Second Appeal as against the Judgment and Decree of the learned Principal District Judge, Dindigul in A.S.No.19 of 2005.

2. The reasons stated by the petitioners is that after the Judgment and Decree by the lower Appellate Court on 20.11.2006, the respondent had informed him that the claim of the petitioners in defending the suit for partition is justified and hence assured that the properties which are in the enjoyment of the defendant can be continued despite the decree of the Courts below. The petitioners also came up with the case that the respondent had given a letter to the Tahsildar, not to change patta based on the judgment of the Courts below as the parties have decided to accept the compromise by the agreement dated 31.12.1980. However, the petitioner's Counsel has admitted that he cannot produce any document to prove the same.



3. Though the petitioners contended that the printed copy of the Judgment and Decree of the lower Courts were received on 14.03.2008, the learned Counsel for the petitioners in the lower Court informed them that the second appeal can be filed sometime later as the respondent has not filed any petition for final decree. The reasons which are stated in paragraph '6' of the affidavit are contrary to the reasons given by the petitioners in paragraphs 4 and 5 of the affidavit. Non-filing of appeal in time because of the assurance given by the respondent is unbelievable. The contention of the petitioners that the respondent came forward to give up his right despite the judgment and decree of the Courts below in their favour is improbable having regard to the fact that the parties were fighting for their right for about 12 years. The respondent filed a counter specifically alleging that the petition is nothing but gross abuse of process of Court and that the contents of the affidavit are false and frivolous and vexatious.

4. It is the case of the respondent that the petitioners have come up with these belated appeal only with an intention to drag on the proceedings without their being any bonafides. Apart from denying the factual contentions of the petitioners, the respondent questioned the *bona fides* of the petitioners in approaching this Court with huge delay of more than seven years.

5. I have considered the submissions of the learned Counsels for both sides and the reasons assigned by the petitioners in the affidavit filed in support of the petition. Having regard to the position that the explanation offered by the petitioners in the affidavit are self contradictory and not probable, the reasons cannot be accepted. The contention of the petitioners that the respondent has agreed in terms of an agreement that was executed in 1980 is unbelievable.

6. In these circumstances allowing the petitioners to file an appeal without any explanation for the inordinate delay will be against the interest of justice. Hence, this petition is dismissed.

sd/-
16/11/2016

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)

TO

- 1 THE PRINCIPAL DISTRICT JUDGE, DINDIGUL
- 2 THE ADDITIONAL SUBORDINATE JUDGE, DINDIGUL

ORDER IN
CMP(MD) No.1665 of 2016 IN
SA(MD) No.SR17503 of 2015
Date :16/11/2016