



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

Thursday, the Second day of November Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice S.BASKARAN

CMP(MD) No.1291 of 2017

IN

SA(MD) No.SR44568 of 2016

CHINNAPILLAI @ CHINNAOLI (DIED) ..DECEASED PLAINTIFF IN
O.S.NO.23/1998
DECEASED RESPONDENT IN
A.S.NO.81/2004

ALAGAN (DIED) ..DECEASED 2ND RESPONDENT IN
A.S.NO.81/2004

1 A. NALLUSAMY ... PETITIONER/APPELLANT/
RESPONDENT NO.3 IN A.S.NO.81/2004

(2ND AND 3RD RESPONDENTS IN
A.S.NO.81/2004 WERE IMPEADED
AS.L.R.OF THE 1ST RESPONDENT
PLAINTIFF AS PER ORDER PASSED
IN I.A.NO.247/2005 DATED 20.02.2016)

(AMENDED AS PER ORDER IN I.A.NO.46/2006 DATED
17.03.2006

Vs

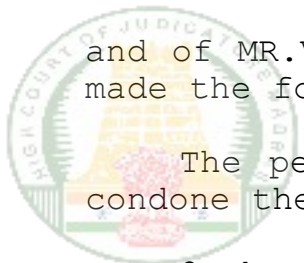
N. CHINNAN ... RESPONDENT/APPELLANT/DEFENDANT

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 1965 days in filing the Second Appeal on
15.11.2016 instead to filing the same on or before 9.5.2011 and thus
render justice.

PRAYER IN SA(MD)NO.SR44568/2016 :

Memorandum of Second Appeal against the judgment and decree of
the learned Subordinate Judge, Sivagangai dated 08.02.2011 passed in
A.S.No.81/2004 allowing the said appeal by dismissing the decree and
Judgment of the District Munsif Court, Thiruppathur in
O.S.No.23/1998 dated 30.06.2004 by partly allowed as regards 'A'
schedule property alone.

ORDER : This petition coming on for orders upon perusing the
<https://hcservices.ecourts.gov.in/hcservices/> petition and the affidavit filed in support thereof and upon hearing
the arguments of M/S. T.JOSEPHJEYAKUMAR, Advocate for the petitioner



and of MR.V.R.SHANMUGANATHAN, Advocate for the Respondent the court made the following order:-

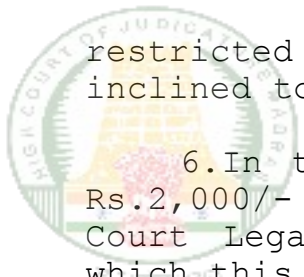
The petitioner has come forward with this petition seeking to condone the delay of 1965 days in filing the Second Appeal.

2.The petitioner states that the mother of the petitioner filed O.S.No.23 of 1998 on the file of the District Munsif Court, Tiruppathur, for the relief of declaration and injunction and the same was decreed by the judgment dated 02.09.2002. Aggrieved over the same the respondent herein filed A.S.No.53 of 2003 in the Sub Court, Sivagangai and the same was remanded to the Trial Court for fresh disposal on 29.12.2003. After re-trial the District Munsif, Tiruppathur, again decreed the suit in favour of the petitioner's mother the plaintiff therein by the judgment dated 30.06.2004. Thereafter the same was challenged by the respondent herein by filing the A.S.No.81 of 2004 and during the pendency of the said first appeal the mother of the petitioner the sole respondent passed away. Hence, the petitioner and his father were impleaded as her Legal heirs as second and third respondents in A.S.No.81 of 2004. The said Appeal was partly allowed and during the pendency of the appeal the father of the petitioner also passed away. Aggrieved over the judgment of the first Appellate Court, as the only surviving legal heir of the plaintiff in O.S.No.23 of 1998, the petitioner herein preferred this Second Appeal before this Court. The judgment of the first Appellate Court was passed on 08.02.2011. But the bundle was received by the petitioner from his counsel only in the middle of 2011 and hence, the delay has occurred in taking steps to file the Second Appeal.

3.The petitioner also states that he was suffering from Asthma and due to the decease his movement was restricted and hence he was not able to contact his counsel. Further the delay has occurred due to the mis-placement of the bundle by his counsel and the same was traced out after considerable point of time only. Thereafter I.A.No.307/2015 was filed to amend the decree in A.S.No.81 of 2004 and the same was allowed on 04.02.2016. Thus the decree passed in A.S.No.81 of 2004 by the first Appellate Court was amended only on 04.02.2016 and as such the delay has occurred in filing the Second Appeal. Hence the petitioner seeks to condone the delay as otherwise he will suffer irreparable loss and damage. Hence the petition.

4.On the other hand, opposing the petition, the learned counsel for the respondent contends that the petitioner has not stated any valid reason and after keeping quiet for such a long time, he has now come forward with this petition only to harras the respondents and since this petition is lack of merits, he seeks to dismissal of this petition.

5.In view of the reasons stated by the petitioner and the fact that the decree in A.S.No.81 of 2004 was amended only on 04.02.2016 and since the petitioner was suffering from Asthma, he was having



restricted travel and in the interest of justice, this Court is inclined to entertain this petition.

6. In the result, this petition will be allowed on payment of Rs.2,000/- (Rupees Two Thousand only) by the petitioner to the High Court Legal Services Committee on or before 13.11.2017, failing which this petition will stand dismissed.

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sd/-
02/11/2017

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE SUBORDINATE JUDGE, SIVAGANGAI DISTRICT

2 THE DISTRICT MUNSIF, THIRUPPTHUR

COPY TO : THE AUTHORISED OFFICER,
LEGAL SERVICE COMMITTEE,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

GJM/SM/SAR-4-7.11.2017-3P-4C

ORDER
IN
CMP(MD) No.1291 of 2017
IN
SA(MD) No.SR44568 of 2016
Date :02/11/2017