



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

Friday, the Twentieth day of October Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice S.BASKARAN

CMP(MD) No.7405 of 2017
IN
SA(MD) No.SR44528 of 2016

KARUPPANATHEVAR (DIED)

1. SIVALINGAM,

2 MURUGAN

... PETITIONERS/APPELLANTS/
APPELLANTS/PLAINTIFFS

Vs

MAYIL VASAHA THEVAR

... RESPONDENT/RESPONDENT/
RESPONDENT/DEFENDANT

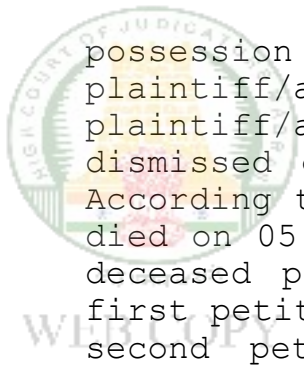
(Cause title accepted vide Court order dt.28.7.2017
made in CMP(MD).184/17 in SA(MD).SR.44528/2016 by PSNJ)

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to pass an order Condoning The Delay of 3472 days in preferring the above Second Appeal as against the decree and judgment made in A.S.No. 47 of 2005 dated 29/12/2006 passed by the Learned Subordinage Judge, Paramakudi, Ramanathapuram District confirming the decree and judgment made in O.S.No. 45 of 2002 on the file of the Learned District Munsif Cum Judicial Magistrate Court, Kamuthi, Ramanathapuram District dated 25/10/2004 forthwith .

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. S.PALANI VELAYUTHAM, Advocate for the petitioner and of Mr.VR.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 3472 days in preferring the present second appeal against the judgment and decree made in A.S.No.47 of 2005, dated 29.12.2006, passed by the learned Subordinate Judge, Paramakudi, Ramanathapuram.

2. The petitioner states that the petitioners are legal heirs of the deceased plaintiff/appellant. According to the petitioners, their father filed O.S.No.45 of 2002, on the file of the District Munsif cum Judicial Magistrate Court, Kamuthi, seeking declaration of title of the suit schedule property and consequential injunction, restraining the respondent from interfering with the peaceful



possession and enjoyment of the suit property by the deceased plaintiff/appellant and that suit was dismissed. The deceased plaintiff/appellant preferred A.S.No.47 of 2005 and the same was dismissed on 29.12.2006, confirming the order of the trial court. According to the petitioner, his father/deceased plaintiff/appellant died on 05.08.2015, leaving behind his three sons. The wife of the deceased plaintiff/appellant pre-deceased him on 17.11.2010. The first petitioner is carrying on business in his native place and the second petitioner is employed in Electricity Department. The petitioners further state that they are unaware of the court proceedings and their father was bed-ridden, during the proceedings before the first appellate court. Subsequently, their father went into coma stage, thereafter, never recovered and subsequently, he passed away. According to the petitioners, they were unaware of the proceedings, as they were not informed by their father and they applied for judgment copy only on 31.08.2016 and the judgment copy of the first appellate court was made ready on 22.09.2016. Hence, the delay of 3472 days has occurred. Hence, the petitioners seek to condone the delay.

3.The learned counsel for the respondent contended that there is no medical proof about the health condition of the deceased plaintiff and nearly 10 years has passed, after passing of the judgment by the first appellate court. Hence, he opposed the petition.

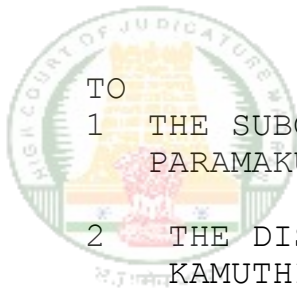
4.Considering the above submissions and the facts and circumstances of the case, this court is of the view that both the courts have concurrently held against the deceased plaintiff. Further, no medical record is produced before this Court to show that the deceased was bed-ridden and he entered into coma, even prior to his death. Further, the first appellate court has disposed of the appeal on 29.12.2006 itself and the father of the petitioners died only on 05.08.2015 nearly after 10 years, after the disposal of the appeal by the first appellate court. There is nothing on record to show that the deceased was bed-ridden and in coma condition during that period of nearly 10 years. In such circumstances, this Court is of the view that no material is placed before the Court to condone the enormous delay of 3472 days in preferring the above second appeal. In such circumstances, this Court finds no merit in the petition. Hence, this petition deserves to be dismissed.

5.Accordingly, this petition is dismissed.

sd/-
20/10/2017

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



TO

1 THE SUBORDINATE JUDGE
PARAMAKUDI, RAMANATHAPURAM DISTRICT

2 THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
KAMUTHI, RAMANATHAPURAM DISTRICT

WEB COPY

+1. C.C. to M/S. S.PALANI VELAYUTHAM Advocate SR.No.32985

ORDER

IN

CMP (MD) No.7405 of 2017

IN

SA (MD) No.SR44528 of 2016

Date :20/10/2017

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