



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

Thursday, the Twenty First day of December Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice S.BASKARAN

CMP(MD) No.8446 of 2017

IN

SA(MD) No.SR24351 of 2017

MUPPIDATHY PANDIAN

... PETITIONER/ APPELLANT

Vs

1 KARADIAMMAL
2 SAPPANIAMMAL
3 MURUGAN

... RESPONDENTS/ RESPONDENTS

(3rd RESPONDENT HEREIN/2nd DEFENDANT

WAS SET EXPARTE BEFORE THE COURTS BELOW AND
SERVICE OF NOTICE TO 3rd RESPONDENT MAY BE
DISPENSED WITH)

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to pass an order to condone the delay of 905 days in filing the main Second Appeal in SA(MD) SR.No.24351 of 2017 before this Honourable Court and thus render justice.

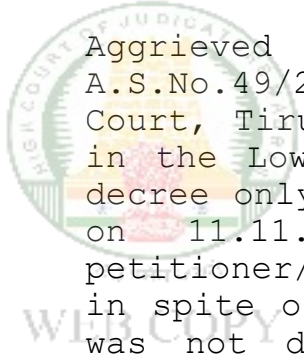
PRAYER IN SA(MD) No.SR24351 of 2017:-

To set aside the judgment and decree dated 18.03.2014 passed in A.S.No.49 of 2013 on the file of the Principal District Judge, Tirunelveli, confirming the judgment and decree dated 05.08.2013 passed in O.S.No.27 of 2008 on the file of the Principal Subordinate Judge, Tenkasi.

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.RAJESH, Advocate for M/S.D.NALLATHAMBI, Advocate for the petitioner and of M/S.A.HAJA MOHIDEEN, Advocate for R1, the court made the following order:-

The petitioner has come forward with this petition seeking to condone the delay of 905 days in filing the above Second Appeal in S.A(MD).No.SR24351 of 2017.

2.The petitioner state that the Second Appeal was filed by the petitioner in S.A(MD).No.SR24351 of 2017 before this Court , against the Judgment and decree, dated 18.03.2014, made in A.S.No.49/2013 passed by the Principal District Court, Tirunelveli. The respondent herein preferred O.S.No.27/2008 on the file of Principal Sub Judge, Tenkasi and the suit was decreed for partition on 05.08.2013.



Aggrieved over the same the petitioner/defendant herein filed A.S.No.49/2013 and the same was dismissed by Principal District Court, Tirunelveli on 18.03.2014. However the petitioner's counsel in the Lower Court applied for printing the copy of judgment and decree only on 01.04.2014 and the same was made ready and delivered on 11.11.2014. Further the Advocate appeared for the petitioner/defendant before the Lower Court shifted his office and in spite of repeated request the case bundle and the judgment copy was not delivered to the petitioner. Thereafter, on repeated demands the case bundle was handed over to the petitioner during November 2016 only. At that time the petitioner was taking treatment in Ayurvedic hospital and recovered from illness only first week of March 2017. Thereafter he contacted his counsel at Madurai and handed over the bundle to him. Hence the delay of 905 days has occurred in filing the Second Appeal. Hence the petitioner seeks to condone the delay.

3.The learned counsel for the 1st respondent present and express no objection. Notice to 3rd respondent dispensed with.

4.In such circumstances, considering the reasons stated by the petitioner and the fact that the delay has occurred due to the delay in getting judgment copy and the bundle from the counsel in the trial Court, this Court is inclined to entertain this petition on condition.

5.Memo filed, stating that the 2nd respondent died and the appellant and the 1st respondent are her Legal heirs. Except them no other legal heir to the 2nd respondent. Memo Recorded. The Registry is directed to carry out the necessary amendments.

6.In the result, this petition will be allowed on payment of cost of Rs.1,000/- (Rupees Thousand only) to the first respondent by the petitioner within a period of 10 days, failing which this petition shall stand dismissed automatically.

sd/-
21/12/2017

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

TO

1. THE PRINCIPAL DISTRICT JUDGE, TIRUNELVELI.
2. THE PRINCIPAL SUBORDINATE JUDGE, TENKASI.

ORDER IN
CMP(MD) No.8446 of 2017 IN
SA(MD) No.SR24351 of 2017
Date :21/12/2017