



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 14.03.2018	Pronounced on: 20.03.2018
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Coram:

The Honourable Dr. Justice G. Jayachandran

CMP No. 19698 & 19699 of 2017 in
Rev. Appl. No. SR80837 & SR80836 of 2017
in S.A. No. 1411 & 1412 of 1997

L. Sairam ... Petitioner/Applicant
in both CMPs/Petitioner
sought to preferred in
Rev. Appl. No. Sr. 80837 &
80836/17/2nd Respondent

/versus/

1. A.N. Muthusamy (died)
2. Manoranjitham
3. G.M. Thiruvengkatachalam
4. G.M. Balasubramanian ... Respondents in both CMPs/
Respondent in -do-/
Appellant in S.A. No. 1411/97
& 1412/97
5. G.M. Senthil Kumar
6. L. Ramesh (died)
7. Mrs. Lakshmi
8. Mr. Ananthan
9. Mrs. Seetha ... Respondents in both CMPs/
Respondents in -do-/
Respondents in 1411/97 &
1412/97
10. Mr. Palaniswamy
11. P.N. Lakshmanan ... Respondents
[Respondents 7 to 11 were given up] in both CMPs/Respondents
in -do- Respondents in
1412/97

Civil Miscellaneous Petition are filed under Section 5 of
Limitation Act, to condone the delay of 152 days in filing the
review application to the judgment and decree made in
S.A. No. 1411 of 1997 & S.A. No. 1412 of 1997 respectively dated
23.02.2017.

SA. NO. 1411/1997: Second Appeal filed against the Judgment and
decree of the Principal District Judge of Periyar District at
Erode in AS. No. 135/1996 dated 29.04.1997 preferred against the
Judgment and decree of the Subordinate Judge, Gobichettipalayam

in OS.No.176 of 1995 dated 08.07.1996.

SA.No.1412 of 1997: Second Appeal filed against the Judgment and decree of the Principal District Judge of Periyar District at Erode in AS.No.124 of 1996 dated 29.04.1997 preferred against the Judgment and Decree of the Subordinate Judge, Gobichettipalayam in OS.No.175 of 1995 dated 08.07.1996.

For Petitioner : Mr. V.Raghavachari
for Mr.M.Naraayanawamy

For RR 2 to 5 : Mr.A.K.Kumaraswamy, Senior Counsel
for Mr.S.Kaishamalai Kumaran

O R D E R

The dispute between the parties is in respect of the property sold by Lakshmanan Chettiar to Muthusamy Chettiar.

2. Based on the agreement dated 08.07.1086 entered between the above mentioned persons, suit for specific performance O.S.No.133 of 1988 on the file of the Sub-Court Gobichettipalayam was filed and culminated in decree in favour of the buyer Lakshmanan Chettiar. Later in E.P.No.3 of 1989 sale deed got executed through Court on 26.04.1998. The delivery of possession recorded on 19.04.1991 and confirmed on 03.05.1991. Thereafter, in O.S.No.442 of 1991 [Renumbered as O.S.No.175 of 1995] for permanent injunction was filed by Lakshmanan Chettiar alleging attempt to dispossess. Interim injunction was also granted.

3. Meanwhile, a partition Suit in O.S.No.120 of 1990 disputing alienable right of their father Lakshmanan Chettiar was filed by L.Ramesh and L.Sairam. Besides relying upon the compromise deed dated 18.10.1992 asserting possession, the sons of Lakshman Chettiar namely L.Ramesh and L.Sairam had filed O.S.No.95 of 1993 seeking permanent injunction.

4. All these three suits were tried together. The partition Suit O.S.No.120 1990 and injunction Suit O.S.No.175 of 1995 filed by Ramesh and Sairam were dismissed. The injunction Suit in O.S.No.176 of 1995 filed by Muthusamy Chettiar, the trial Court held that the plaintiff was dispossessed pending suit. Hence, the possession has to be delivered back to Muthusamy.

5. Against the Judgment and decree passed by the Trial Court in O.S.No.175 of 1995 [injunction suit of Muthusamy], O.S.No.176 of 1995 [injunction suit of Ramesh and Sairam] and O.S.No.120 of 1990 [Partition Suit by Ramesh and Sairam] A.S.No.124 of 1996, A.S.No.135 of 1996 and A.S.No.135 of 1996 respectively was filed.

6. The appellate Court allowed A.S.No.124 of 1996 and A.S.No.135 of 1996. Dismissed the appeal A.S.No.136 of 1996 arising from partition suit. The appeals were disposed as above vide judgment dated 29.04.1997. Second appeals were filed by the aggrieved parties before the High Court while S.A.No.833 of 1998 arising from partition suit preferred by Ramesh & Sairam against concurrent judgments was dismissed. The other two S.A.No.1411 and S.A.No.1412 of 1997 preferred by Muthusamy, later represented by its legal representatives on his death were heard by this Court and allowed on 23.02.2017. The judgment is now sought to be reviewed and in filing the review petition there is a delay of 192 days.

7. In the counter filed by the respondent, it is pointed out that the review petition is not maintainable on merits. Under the guise of review the merit of the judgment is sought to be re-agitated. Review cannot be treated as appeal in disguise. No reason assigned for the delay except citing ill health of the petitioner.

8. Heard the learned Senior Counsel appearing on either side. The judgment and the documents relied by the counsel for the Review petition perused. The only new fact which not agitated before this Court is pendency of suit filed by the review petitioner before Sub Court Gobichettipalayam for specific enforcement of the compromise deed dated 18.10.1992 which is marked as Ex.A.18 and also the subject matter taken up for consideration by this Court in the Second appeal as one of the questions of law.

9. This Court finds the condone delay petition with bereft of reason is liable to be dismissed. It is submitted that had the filing of O.S.No.109 of 2004 [earlier O.S.No.112 of 1997] on the file of Sub Court, Gobichettipalayam and its pendency been placed before this Court, this Court would have decided otherwise. When grounds to review the judgment is made out, delay in filing review should not stand in the way to meet the ends of justice.

10. In this connection para 10 of the judgment is referred by the learned Senior Counsel for Review Petitioner which according to him has caused prejudice to the right of the review petitioner in perusing his Suit in O.S.No.109 of 2004.

11. This Court considering this plea, find that at para 10 it is observed that,

“In the light of the above dates and events, this Court finds that the appellants herein have preferred the suit for injunction in O.S.No.442 of 1991 before the District Munsif Court, Gobichettipalayam on

24.09.1991 and the same was transferred to the Sub Court, Gobichettipalayam pursuant to order passed in Tr.O.P.No.1 of 1995. Thereafter, it was taken on file and renumbered as O.S.No.175 of 1995. Ex.A18-agreement is dated 18.10.1992 evidently pending suit. It is admitted by the respondents that this panchayat has not come into force. It is not his case that he has paid Rs.50,000/- to the respondents are pursuing the suit. Even if it is so, he can at the most seek the enforceability of the agreement Ex.A-18 on a whole and cannot pick and chose the recitals in isolation and try to take advantage of this document, which has not been honoured by the preponder of the document."

12. The Second appeals A.S.No.124 of 1996 and 135 of 1996 are filed against the judgment and decree passed on 29.04.1997. The suit which is now brought to the notice of this Court was subsequently filed on 21.08.1997. Thus the suit being filed subsequent to the disposal of first appeal, even if pending of this suit had brought to the notice of this Court while hearing the Second Appeal, the final decision of this Court would have not changed. Since the facts of the specific performance suit based on a compromise deed is subsequent to the disposal of first appeal, it shall have no bearing in deciding the Second appeal arising out of suits for injunction. However, this Court instead of observing at para 10 of the judgment that;

"Even if it is so, he can at the most seek the enforceability of the agreement Ex.A.18 on a whole and can not pick and choose the recitals in isolation and try to take advantage of this document" would have observed that,

"since the respondents have approached the Court for enforcement of Ex.A.18 dated 18.10.1992 in O.S.No.109 of 2004 filed on 21.08.1997 after delay of 5 years it is for them to prove the execution of the agreement and enforceability of the same, which the trial has to decide based on the merit of the plea and proof. Pending that suit, the possession of the appellant cannot be deprived which is in pursuant to the execution of a Court decree."

Therefore there would have been no material change in the conclusion.

13. In the result, for want of reason the petition to condone delay of 192 days in filing the Review Petition is dismissed. Since, delay in filing review petition not condoned, the Review petition in SR stage is dismissed. However, the observation made in paragraph 12 of this order should be on record. Therefore, the above order shall be annexed to the

common judgment in S.A.No.1411 and 1412 of 1997 dated 23.02.2017.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

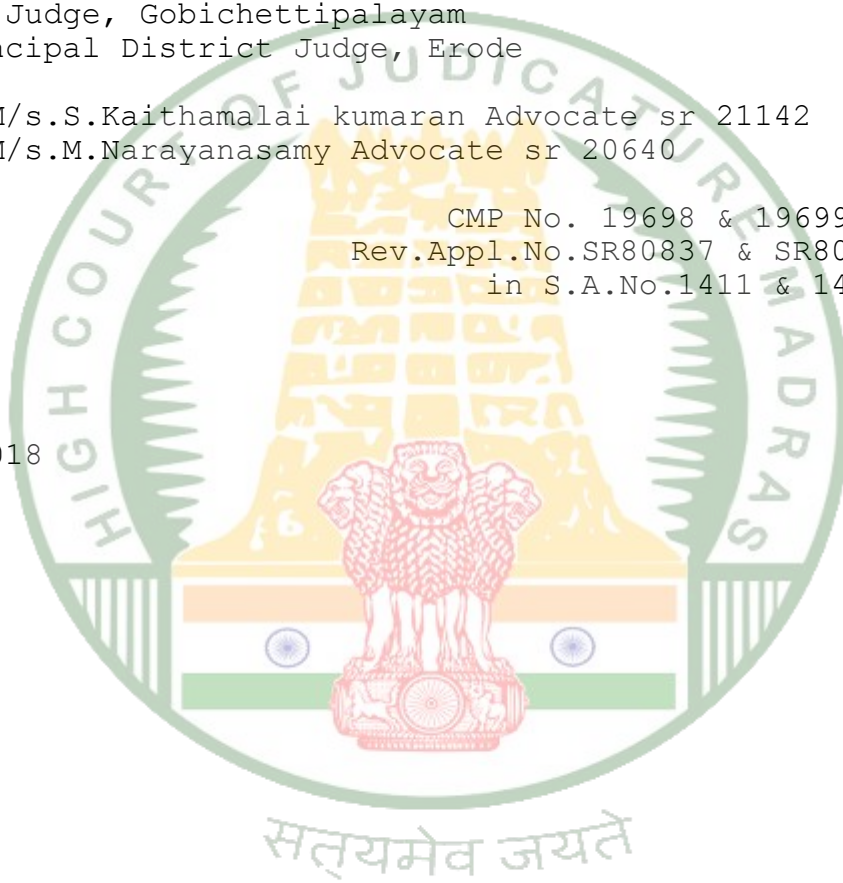
To

- 1.The Sub Judge, Gobichettipalayam
- 2.The Principal District Judge, Erode

+1 cc to M/s.S.Kaithamalai kumaran Advocate sr 21142
+1 cc to M/s.M.Narayanasamy Advocate sr 20640

CMP No. 19698 & 19699 of 2017 in
Rev.Appl.No.SR80837 & SR80836 of 2017
in S.A.No.1411 & 1412 of 1997

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