



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2018

CORAM

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THE HONOURABLE MR. JUSTICE S.S.SUNDARC.M.P.(MD)No.11485 of 2016 in
S.A.(MD)No.SR11514 of 2016

1. Anbalagan
2. Muthazhakan

... Petitioners/Appellants

Vs.

Mahalingam(Died)

1. Selvam
2. Thasammal
3. M.Nicshon

... Respondents/Respondents

Prayer in C.M.P.(MD)No.11485 of 2016: Petition is filed under Order 41 Rule 3(A) of C.P.C., to condone the delay of 917 days in filing the above Second Appeal against the Judgment and Decree made in A.S.No.54 of 2008 on the file of the Subordinate Court, Kuzhithurai.

Prayer in S.A.(MD)No.SR11514 of 2016: Petition is filed under Section 100 of C.P.C., to set aside the Judgment passed by the learned Subordinate Judge, Kuzhithurai, in A.S.No.54 of 2008, dated 28.06.2013 by confirming the Judgment and Decree passed in O.S.No.147 of 1998 on the file of the learned Principal District Munsif, Kuzhithurai, dated 15.03.2008.

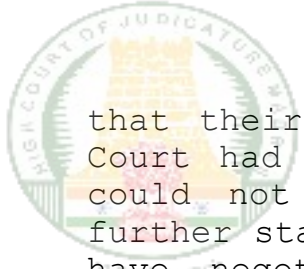
For Petitioners : Mr.N.Sivakumar
For R-1 : Mr.C.Godwin
For R-2 & R-3 : No appearance.

O R D E R

This petition is filed to condone the delay of 917 days in filing the above Second Appeal against the Judgment and Decree made in A.S.No.54 of 2008 on the file of the Subordinate Court, Kuzhithurai.

2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the first respondent.

3. In the affidavit filed in support of this petition, the second petitioner has stated that he was working at Chennai and that the case was followed by his brother, namely, the first petitioner. It is further stated that the second petitioner's brother, the first petitioner is an illiterate. It is also the case of the petitioners

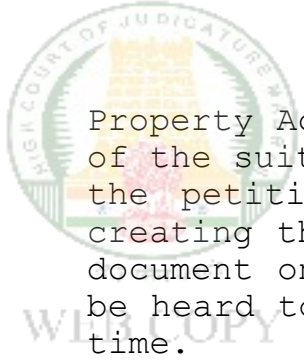


that their counsel who was conducting the case before the lower Court had closed his practice and that therefore, the petitioners could not locate the bundle immediately. The second petitioner further stated that he informed his brother, the first petitioner to have negotiation with the respondents for a compromise or an amicable settlement, and that the compromise talks failed. It is for the above reason, it is stated that the delay had occurred.

4. The first respondent contested this petition by filing a detailed counter and he is the second defendant in the Suit. The reasons stated in the affidavit filed in support of this petition were specifically denied by the respondents. It is admitted that in the affidavit filed in support of this petition, there is some mistake and the first petitioner has been referred to as the second petitioner and vice versa.

5. Though it is contended that the first petitioner in the petition is an illiterate, it is stated in the counter affidavit that the second petitioner's wife is an Advocate and she is a practising lawyer. Further it is stated that the second petitioner has executed a settlement deed, dated 31.08.2015 in respect of the property for which the Suit was filed by the petitioners. It is further stated in the counter affidavit that the contention of the petitioners that their Advocate had closed his practice is not correct. It is specifically stated in the counter affidavit that the case on behalf of the petitioners was conducted by one Mrs. Juliet Merlin, Advocate, and that she is practising at Kuzhithurai even today and that her husband also is practising at Kuzhithurai till now. Hence, it is contended by the respondents that the petitioners have come up with a false case. Even with regard to the alleged compromise talk, it is specifically denied and the respondents have referred to serious dispute and filing of criminal cases after the disposal of appeal in respect of the suit property. It is therefore contended by the respondents that there was no compromise talks and that no acceptable reasons are given to condone the delay. It is also stated that after the dismissal of the Appeal in A.S.No.54 of 2008, the second petitioner demolished the compound wall and prevented the respondents from erecting the compound wall. It is further stated that the respondents sought for police protection to restore the compound wall that was illegally damaged by the petitioners. It is also stated that a criminal case was also registered in Crime No.23 of 2017.

6. Having regard to the statements of facts furnished by the respondents leaving alone the dispute on the merits of the case of the petitioners, this Court is able to find that the petitioners have not come up with clean hands and the explanation offered by the petitioners in the affidavit filed in support of this petition are demonstrated as false and unbelievable. When the second petitioner has executed a settlement deed in favour of his wife after the dismissal of the Appeal, the conduct of the petitioners cannot be approved. There is a specific bar under Section 52 of Transfer of



Property Act, to deal with the property which is the subject matter of the suit. In this case, after the disposal of the Appeal against the petitioners, the deponent has executed a registered document creating third party right. A person who found time to register the document on 31.08.2015 before the Sub Registrar, Marthandam, cannot be heard to say that he could not take steps to file the appeal in time.

7. In such circumstances, this Court is not inclined to show any indulgence in favour of the petitioners to condone the inordinate delay of 917 days. Since the explanation offered by the petitioners are not acceptable, this Court has no other option, but to dismiss this petition. Hence, the petition is dismissed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge,
Kuzhithurai.
2. The Principal District Munsif,
Kuzhithurai.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.N.SIVAKUMAR, ADVOCATE IN SR No. 47705

+ 1 CC TO Mr.C.GODWIN, ADVOCATE IN SR No. 2241

PMU

TE/JC/SAR-4 : 07/03/2018 : 3P/7C

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S.A. (MD) No.SR11514 of 2016
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