



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.01.2018

CORAM

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.M.P.(MD)No.9287 of 2017 and
S.A.(MD)No.SR40128 of 2017

Ayyankalai Naicker(Died)

1. Guruvammal
2. Avudaiithai
3. Mariammal
4. Veeralakshmi
5. Ponnuthai
6. Rajeswari

... Petitioners/Appellants

Vs.

Shanmugaiah Konar

... Respondent/Respondent

Prayer in C.M.P.(MD)No.9287 of 2017: Petition is filed under Order 41 Rule 3(a) of C.P.C., r/w Section 5 of Limitation Act, to condone the delay of 1311 days in filing this Second Appeal.

Prayer in S.A.(MD)No.SR40128 of 2017: Petition is filed under Section 100 of C.P.C., to allow this Second Appeal by setting aside the Judgment and Decree passed in A.S.No.25 of 2011 on the file of the learned Subordinate Judge, Sanakarankovil, dated 04.12.2013 reversing the Judgment and Decree passed in O.S.No.84 of 2001 on the file of the learned Principal District Munsif, Sankarankovil, dated 26.09.2006.

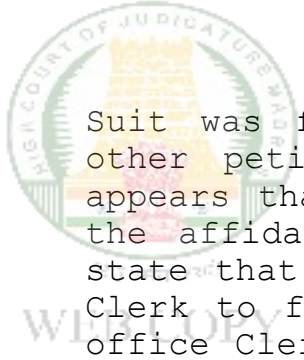
For Petitioners : Mr.N.GA.Natraj
For Respondent : Mr.M.Thirunavukkarasu

O R D E R

This petition is filed to condone the delay of 1311 days in filing this Second Appeal.

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

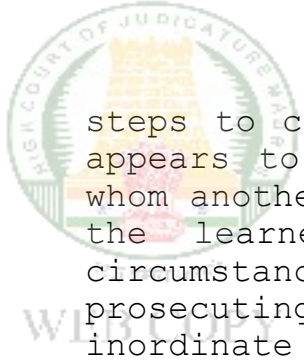
3. In support of this petition, the petitioners have filed an affidavit wherein it is stated that the first petitioner is 63 years old and that she alone is taking care of the suit property and the



Suit was filed by her husband, namely, Late.Thiru.Muthusamy. The other petitioners are the children of Late.Thiru.Muthusamy. It appears that the Appeal itself was disposed of on 04.12.2013. In the affidavit filed in support of this petition, the petitioners state that the first petitioner gave money to her counsel's office Clerk to file a copy application. However, it is stated that the office Clerk of the counsel did not file the copy application even after this length of time. It is in these circumstances, it is stated that the certified copy of the lower Court Judgment was obtained by her only on 16.04.2016. It is further stated that after receiving the copy of the Judgment and Decree, the first petitioner gave them to her counsel in Madurai for preferring Second Appeal. It was stated by the first petitioner that her counsel intimated her about some corrections which was made in the decree copy only on 10.08.2017. As a consequence, it is stated that a huge delay had occurred.

4. The respondent filed a detailed counter denying the averments made in the affidavit filed in support of the delay condonation petition. It is stated that there were 3 Clerks in the office of the counsel for the petitioners before the lower Court and that all the 3 Clerks are working in the same office for the past more than 20 years. It is further stated that out of the 3 Clerks one Clerk, by name, Murugan has now become an Advocate and that is he is attached to the same office. With regard to the contention regarding corrections, that were made in the Decree, it is pointed by the learned counsel for the respondent that the papers were given to the lower Court for correction only on 10.08.2017 and that on the same day the corrected copy was issued to the petitioners. In these circumstances, it was further submitted by the learned counsel for the respondent that the petitioner has not explained the delay properly for the period between 16.04.2016 and 10.08.2017. Be that as it may, the learned counsel for the respondent pointed out that the petitioners sold the property which is the subject matter of the Appeal to a third party, by name, Mr.V.Ramar, by a document dated 01.12.2008. There were subsequent alienations by the purchaser in the year 2011. Since, the purchaser also has put some constructions, it is pointed out that the respondent was constrained to file another Suit in O.S.No.97 of 2017 for recovery of possession as against the purchaser.

5. It is only after the suit notice was served on the subsequent purchaser, it is stated that this Appeal has been presented. Since the delay is inordinate, the petitioners are bound to explain the delay to the satisfaction of this Court. Apart from the fact that there was no proper explanation for the delay, the *bonafides* of the purchaser in prosecuting the Appeal is doubtful as the petitioners have created third party right purposely and they have not disclosed the same during the pendency of the Appeal or the Suit before the lower Courts. After the execution of the sale deed in favour of a third party on 01.12.2008, the petitioners have lost their interest. The purchaser of the property has not taken any



steps to come on record. In such circumstances, the present Appeal appears to be at the instance of the subsequent purchaser against whom another Suit has been filed in O.S.No.97 of 2017 on the file of the learned Principal District Munsif, Sankarankovil. Overall circumstances clearly indicate that there is no *bonafide* in prosecuting this Appeal and the petitioners have not explained the inordinate delay of 1311 days to the satisfaction of this Court.

6. Having regard to the well settled principles, this Court is not inclined to show any indulgence to the petitioners to condone the huge delay of 1311 days in filing the Appeal. Hence, the petition is dismissed as devoid of any merits.

Sd/-
Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar

To

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

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