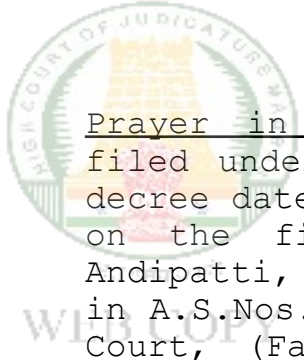




Prayer in (*) S.A. (MD) Nos. SR55878 & 55880 of 2008: Second Appeals filed under Section 100 of C.P.C., to set aside the judgment and decree dated 12.03.1998 in O.S.No. 74 of 1996 and O.S.No.123 of 1997 on the file of the District Munsif cum Judicial Magistrate, Andipatti, as confirmed in the judgment and decree, dated 20.06.2008 in A.S.Nos.40 and 41 of 1998 on the file of the Additional District Court, (Fast Track Court), Periyakulam and to allow the Second Appeals.

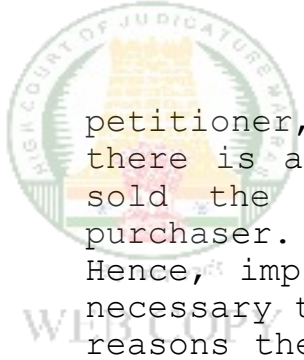
For Petitioners : Mr.H.Arumugam
 For R1 and R2 : Mr.J.Gunaseelan Muthaiah
 Additional Government Pleader
 For R3 and R4 : Mr.PT.S.Narendravasan
 For R5 : No appearance

C O M M O M O R D E R

These petitions are filed to condone the delay of 893 days in representing the Second Appeals.

2.On the side of the petitioners, it is stated that the petitioners filed two suits in O.S.No.74 of 1996 and O.S.No.123 of 1997 on the file of the learned District Munsif cum Judicial Magistrate, Andipatti. The prayer in O.S.No.74 of 1996 is for injunction. The prayer in O.S.No.123 of 1997 is for framing a scheme in respect of the administration of the School. This School was started by one Velappan Naicker, who had two daughters namely, Subbammal and Koppammal. Both were given in marriage to Venkadasamy Naicker. The marriage took place prior to the independence and there is nothing illegal about it. The respondent K.V.Subbaiah is the son of Venkadasamy Naicker born through the elder sister and the petitioners were the Legal Representative's of the Potti Naicker. In O.S.No.488 of 1981, in the written statement filed by K.V.Subbaiah, he has stated that the School was in the charge of Potti Naicker and later he was permitted to take a leading part in the School Management. In the written statement K.V.Subbaiah has admitted that the petitioners are also the LR's, on the basis of a Will, the Lower Court has dismissed the suits.

3.Against which, the petitioners filed the appeals in A.S.No.40 of 1998 and A.S.No.41 of 1998 before the learned Additional District cum Fast Track Court, Periyakulam and the appeals were dismissed on 20.06.2008, the suit property was sold for a consideration of Rs.10,00,000/- (Rupees Ten Lakhs only) on 17.07.2008, without obtaining any permission from the Department, under Section 38 of the Tamil Nadu Private Schools Regulation Act. When the petitioners were preparing for filing the second appeal by sheer chance they come across a document, dated 01.02.1939 registered as document No.186/1993 on the file of the Andipatti Sub Registrar, which was executed by Velappa Naicker wherein he has affixed his signature as Velu Subbana, that document was executed around the same time of Ex.B.5. So, that document has to be received as an Additional evidence. Due to communication gap between the counsel and the



petitioner, the appeal could not be filed within the time and hence, there is a delay in representing the appeals, Since Mr.K.V.Subaiah sold the property, it is necessary to implead the subsequent purchaser. Otherwise, there will be multiplicity of proceedings. Hence, impleading petition is also to be filed and it is further necessary to appoint a receiver to manage the property. On the above reasons the delay of 893 days in representing the Second Appeal is to be allowed.

4.On the side of the respondents, it is stated that the Original Suit was filed in the year 1996 and 1997 respectively. Both the suits were dismissed on 12.03.1998 itself. The petitioners filed two appeals in A.S.Nos.40 and 41 of 1998 and both the appeals were dismissed on 20.06.2008. The second appeal was presented in the year 2008, but was not yet numbered, as the petition was not represented in time. The reason stated for the delay is only communication gap between the petitioner and the counsel. Already 10 years passed away to file the appeal and the delay mentioned in this petition is more than 2 ½ years. It is prayed to dismiss the petition.

5.Records perused.

6.Each day of delay is to be explained. On the side of the petitioner, it is not proved that the petitioner has taken earnest steps to meet his counsel or to contact his counsel. When there is so many ways available for communication, the reason stated in the petitions, is not satisfactory. These petitions are filed only to drag on the proceedings and the original suits are filed in the year 1996 itself. Hence, for the above reasons it is decided that there is no merit in these petitions and hence, these petitions are liable to be dismissed.

7.The reasons stated in the affidavit filed in support of these petitions, are not satisfactory and hence, these petitions are dismissed. Consequently, the S.A.(MD)No.SR55878 and S.A.(MD) No.SR55880 of 2008 are also closed.

Sd/-

Assistant Registrar (CO)
(Dated: 05.09.2018)

**(*)AMENDED VIDE COURT ORDER DATED 12.10.2018
IN CMP(MD)NO.S4627 & 4628/2018 IN
SA(MD)NOS.SR55878 AND 55880/2008**

Sd/-

Assistant Registrar (CO)
(Dated: 14.11.2018)

// True Copy //



To

(*) to be substituted for the order already despatched on 05.10.2018.

1.The Additional District Judge,
(Fast Track Court), Periyakulam.

2.The District Munsif cum Judicial Magistrate,
Andipatti.

+2ccs TO MR.H.ARUMUGAM, ADVOCATE IN S.R.NO.79008,79009.

LS

DS RP SAR-1 03.10.2018 4P/5C

TR/SV/SAR-IV(14.11.2018) 4P 5C

C.M.P. (MD) .Nos.4627 and 4628 of 2018

in

(*) S.A. (MD) .Nos.SR55878 and 55880 of 2008

16.08.2018