



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.10.2018

DELIVERED ON : 01.11.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.P (MD) No.10366 of 2018

in

S.A (MD) No.SR39012 of 2016

and

S.A (MD) No.SR39012 of 2016

Jainulabuddin

: Petitioner/Appellant

Vs.

1. The Idol of Sri Vinyagar st Sevllur
rep. By the Executive Officer,
Sri Nallandavar Temple,
Manapparai. : First Respondent/First Respondent
2. Ashrabibi
3. M.K.M.Sahabuddin
4. Rahimunnisa
5. The Kalaivani Health and Educational Trust,
A registered No.RCD No.976/2000,
rep. By its President V.S.Chidambaram,
Having its office at Door No.42A,
Viralimalai Road, Manapparai.
6. The Kalaivani Matriculation School
rep. By its Correspondent V.S.Chidambaram,
Having its office at Door No.9,
Viralimalai Road, Manapparai.
7. Pandiyarajan
[As no relief is claimed against the
respondents 2 to 7, notice to the
respondents 2 to 7 is given up].
: Respondents 2 to 7/Respondents 2 to 7

PRAYER IN C.M.P (MD) No.10366 of 2018: Civil Miscellaneous petition is filed under Order 22, Rule 3 U/s.151 CPC, to condone the delay of 720 days in representing the second appeal in SASR.No.39012 of 2016.

PRAYER IN SA (MD) No.SR.39012 of 2016: Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 against the Judgment and decree dated 28.04.2016 passed in A.S.No.71 of 2011 by the Second Additional Sub Court, Tiruchirappalli reversing the



Judgment and decree dated 19.11.2010 passed in O.S.No.29 of 2005 on the file of the District Munsif Court, Manapparai.

For Petitioner/ :M/s.J.Maria Roseline
Appellant

WEB COPY

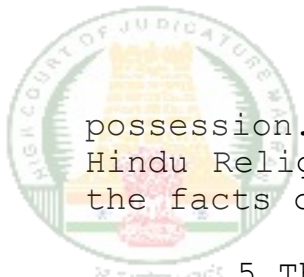
ORDER

This petition is filed to condone the delay of 720 days in representation of the the second appeal papers returned for curing defects.

2.The appellant is the first defendant in the suit in O.S.No.29 of 2005. The first respondent, namely the Executive Officer, Sri Nallandavar Temple, Manapparai representing the Idol of Sri Vinayagar at Sevalur is the plaintiff.

3.The suit for possession is based on title. The suit land which was subject matter of an inam grant in favour of the plaintiff temple was let out for lease by the managers of the temple to third parties. Later after the enactment of Inam Abolition Act, under the provisions of Tamil Nadu Minor Inam (Abolition and Conversion into Ryotwari) Act 1963, ryotwari patta was granted to the temple in the year 1968. While so, in the year 1976, defendants 1 to 4 in the suit have obtained patta to the suit land. Due to mismanagement of the managers of the temple, Hindu Religious and Charitable and Endowments Department took over the management of the temple and found that patta has been transferred in favour of the defendants, without proper enquiry and notice to the temple, which holds the patta. Hence, an appeal to Revenue Divisional Officer was preferred and allowed. The patta was retransferred in favour of the plaintiff on 26.05.1993. Against the order of the Revenue Divisional Officer, the defendants filed appeal and in the appeal the order of the Revenue Divisional Officer was reversed by the District Revenue Officer. Contending that the revenue authorities have no power to decide dispute regarding title, the possession of the defendants in the suit property is that of trespassers and provision of Limitation Act does not apply to the Hindu Religious and Charitable and Endowments Act, seeking possession and mesne profit, suit is filed.

4.The defendants 1 and 5 to 7 contested the suit on the ground that the suit property was not given in grant to the plaintiff idol. It was personal grant given to one Muthu Palani Pandaram. At no point of time, the property was in possession of the managers of the temple and leased to third parties. Without notice to the person to whom the personal grant was given and was in possession, patta was granted to the idol. The error was rectified in the year 1974 by transferring patta in favour of the defendants. The defendants are purchasers of the suit property from the descendants of the grant holder. The defendants and its predeceators in title were in open, continuous and exclusiive possession of the property from 1920 and therefore had perfected title by adverse



possession. The law of limitation applies and Section 109 of the Hindu Religious and Charitable and Endowments Act does not apply to the facts of the case.

5. The Trial Court has allowed the suit. The Trial Court has relied upon the Division Bench Judgment of this Court rendered in **Palaniappa Pandaram and others v. Special Commissioner of Land Reforms** reported in (1995) 2 MLJ 594 and held that the subsequent transfer of patta in favour of defendants overlooking the patta granted earlier to the idol by the Settlement Tahsildar under the Inam Abolition Act is irregular. The exemption of Limitation Act given to the Hindu Religious and Charitable and Endowments Department properties under Section 109 of the Act is applicable to the plaintiff.

6. The first defendant aggrieved by the Trial Court's Judgment has filed appeal suit in A.S.No.71 of 2011 before the Sub Court, Trichy. The first appellate Court after reappreciating the facts and law had confirmed the decree passed by the Trial Court in favour of the plaintiff.

7. The reasoning and law applied by the Courts below are in consonance to the settled legal principles. This Court is unable to see any serious substantial question of law involved to entertain the appeal.

8. While so, aggrieved by the concurrent findings, the second appeal though filed in time, but with defect. The appellant has taken 720 days to rectify the defect and represent it. The cause for delay in representation is stated as below:

"The petitioner has filed the main second appeal challenging the judgment and decree dated 28.04.2016 passed in A.S.No.71 of 2011 on the file of the II Additional Subordinate Judge, Tiruchirappalli confirming the judgment and decree dated 19.11.2010 passed in O.S.No.29 of 2005 on the file of the Court of District Munsif, Manapparai. The Second Appeal was filed on 04.10.2016 and the papers were returned on 05.10.2016 for complying with the defects pointed out in the return sheet. At the time of filing the Second Appeal, the petitioner had obtained only the judgment and decree copies of the Trial Court and the first appellate Court and with the said copies, the petitioner's counsel had preferred the Second Appeal. The petitioner's counsel had required the petitioner to furnish the pleadings set and deposition of witnesses and other documentary evidence. As it took some time for the petitioner to get the requisite documents from his trial lawyer, the delay had occurred in representing the Second Appeal. Further the petitioner was suffering from financial difficulties and therefore he was not in a position to immediately mobilize the funds for meeting the litigation expenses. The delay



in representing the second appeal is neither willful nor wanton, but only on account of the reasons set forth above. If the representation delay is not condoned, the petitioner would be put to grave and irreparable loss. On the other hand, no prejudice would be caused to the 1st respondent, if the representation delay is condoned".

The reason stated above cannot be a cause sufficient to condone enormous delay of two years in representing papers, challenging concurrent findings of the Courts below, when the suit for possession filed in the year 2005 and decreed in the year 2011. On further appeal, the execution of the decree has been delayed for another five years. Now to prefer the appeal, the first defendant has taken two years. This will undoubtedly cause grave prejudice to the plaintiff/ decree holder. Delay in cases of this nature unless properly explained, cannot be condoned by just imposing cost. The title holder who has regained the possession through a decree of the Court will have an expectation to see the fruits of the decree at the earliest. Any person who lost the case should be vigilant in pursuing the legal remedy at the earliest. The judgment debtor cannot fall into deep slumber and wake up after two years to file petition to condone delay and offer some money as cost to keep the litigation alive. The legitimate expectation of a decree holder cannot be further deprived at the instance of the first defendant, who had been declared as trespasser by the Courts below.

9. For the reasons stated above, the petition to condone the delay of 720 days in representing SA(MD)No.SR39012 of 2016 is dismissed. Consequently, connected SA(MD)No.SR39012 of 2016 is rejected at SR stage itself.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Second Additional Subordinate Judge,
Tiruchirappalli.
2. The District Munsif,
Manapparai.

+ 1 CC TO Mr.J.MARIA ROSELINE, ADVOCATE IN SR No. 93908

SMN

TE/SV/SAR-2 : 26/11/2018 : 4P/4C