



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Tuesday, the Eleventh day of December Two Thousand Eighteen

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PRESENT

The Hon`ble Mrs.Justice R.THARANI

CMP(MD) No.9036 of 2018
IN
SA(MD) No.153 of 2014

1 MAYALAGAN (DIED)
2 PERIYAKARUPPAN
RAJA @ MADARASAN (DIED)
3 GOVINDAN
4 ANGUTHAN
NALLI (DIED)
5 PARANTHAMAN
6 NARAYANAN
7 PITCHAIAMMAL
8 PARAMESWARI
9 MINOR KARUNAGARAN
10 MINOR NALLAMANI
11 MINOR ABINAYA,
12 MINOR NAGARAJAN

... PETITIONERS/APPELLANTS

(MINOR PETITIONERS 9 TO 12 REPRESENTED
THROUGH THEIR MOTHER AND NATURAL
GUARDIAN PARAMESWARI/8th PETITIONER)

Vs

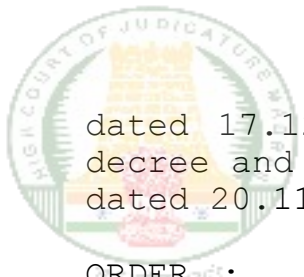
K.PALANICHAMY KONAR (DIED)
1 PUNITHA
2 THAVAMANI
3 VALLI
4 KANDAVEL
5 KEDARNATH
6 SHANMUGAM
7 THIRUGNANASAMBANTHAM

... RESPONDENTS/PROPOSED LEGAL
HEIRS OF RESPONDENT

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay 1088 of days in filing to restoring the above SA (MD)No.153 of 2014 and thus render justice.

Prayer in SA(MD). 153/ 2014 :

<https://hcservices.ecourts.gov.in/hcservices/>
to prefer this memorandum of Second Appeal against the decree and judgment of the First Additional Subordinate Judge of Madurai



dated 17.12.2012 and passed in AS.No.17/2007 by setting aside the decree and judgment of the Principal District Munsif of Madurai Town dated 20.11.2006 and passed in OS.No.1157/2000.

ORDER: This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.K.C.RAMALINGAM, Advocate for the petitioner and of MR.R.ARAVINDRAJ, Advocate for R2 and MR.S.MANICKAM, Advocate for R3 and MR.M.KANNAN, Advocate for R4 to R7 and Not appeared for R1 either in person or by an Advocate, the court made the following order:-

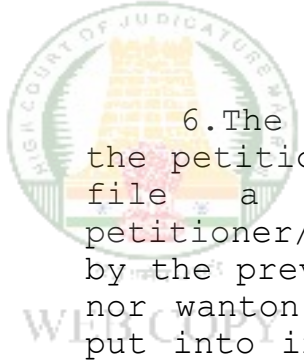
This petition is filed to condone the delay of 1088 days in filing the representation of C.M.P.(MD) SR Nos.35269 and 35270 of 2014 in S.A.(MD)No.153 of 2014 and petition to restore the Civil Miscellaneous Petition, which was dismissed for non compliance, on 21.03.2016.

2.The petitioners are the proposed Legal Representatives of the first appellant and the respondents are the legal Representatives of Palanisamy Konar/respondent.

3.On the side of the petitioners, it is stated that the Second Appeal was dismissed on the ground that the previous order was not complied with. In the meanwhile, the first petitioner died, but, the petitioner's Advocate has not taken any steps, to set aside and to restore the order passed by this Court, dated 20.08.2015. The previous counsel has filed a petition to implead the petitioner's Legal Representatives of Palanisamy Konar, along with a condone delay petition in C.M.P.(MD)SR Nos.35269 and 35270 of 2014. Both the petitions were returned pointing out certain defects. Before the returns were not complied with the SR's were listed for hearing on 21.03.2016 and unfortunately, the previous counsel had not complied with the returns and consequently, the petitions were dismissed for default.

4.On the side of the petitioners, it is stated that the disputed property was allotted to the grand-father of the petitioner as a 'Toty (Thalayari) Maniyam by the British Government in the year 1908 and the first respondent is claiming property as if he has purchased the property in the year 1908 itself and that the petitioner succeeded in the trial Court.

5.The respondents filed an appeal in A.S.No.17 of 2007 and the same was allowed on 17.01.2012. Against that appeal, the Second Appeal was filed. During the pendency of the Second Appeal, the first respondent died, but, unfortunately, the same was not known to the petitioners. After hearing about the death of the first respondent, the petitioners filed a petition for impleading the L.R.'s of Late.Palanisamy Knoar along with a delay condone petition and both petitions were returned by the Registry pointing out certain defects.



6.The previous counsel did not comply the returns and hence, the petitions were dismissed for default. The petitioner could not file a Restoration Petition in time, as the first petitioner/appellant also died. The returns were not complied with by the previous counsel for the petitioner, which is neither wilful nor wanton. If the petitions are not restored petitioner would be put into injustice and great hardship and prayed that the delay of 1088 days in restoring the above S.A.(MD)No.153 of 2014 in filing of restore petition to be condoned.

7.On the side of the respondents, it is stated that the first respondent purchased the property in the year 1909 and the respondents are in possession and enjoyment of the property for the past 100 years. The suit is of the year 2000 and for the past 18 years, litigations are going on. The first respondent was dead even before the filing of the Second Appeal. The petitioner and the first respondent are residing in the same village and the petitioner even attended the funeral functions also.

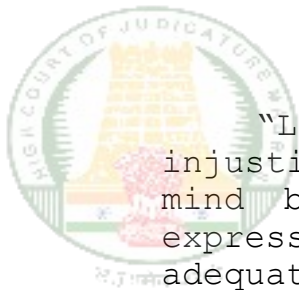
8.It is further stated that the only point raised by the petitioners is that the previous counsel had not complied with the return which was at the S.R. Stage. But, the same counsel is still appearing for the petitioners and the petitioners are contesting the E.P. proceedings with the help of that particular counsel. Already Legal Representative Petition was filed with a delay of 128 days and that petition was dismissed on 20.08.2015. The Second Appeal was dismissed on 16.10.2015 and that Execution Petition was filed and the same counsel has appeared in the E.P. proceedings on 02.01.2016. This is the second petition filed for the same plea. In the E.P. Proceedings counter was filed.

9.It is further stated that there is no evidence to prove that the Advocate was having ill-health on 22.12.2016 and on 08.02.2017 and that Memos were filed on the side of the petitioner in the E.P. Proceedings as if the Second Appeal is still pending, no steps was taken to implead the Legal Representatives of the deceased/first appellant. The petitioners are trying to mislead the both the Courts. It is further stated that the same counsel was appearing for the petitioners till 2018 and the reasons stated in this petition are unbelievable.

10.The learned counsel appearing for the petitioners relied upon the judgment passed by the Hon'ble Supreme Court in the case of Raghu Forwarding Agency and another Vs. Union of Indian and others reported in (2003) 12 SCC 272, which reads as follows:

"On fact of the case, too technical view of matter of limitation should not been taken and the delay in filing the composite appeal should have been condoned"

11.The learned counsel appearing for the respondents relied upon the judgment passed by the Hon'ble Supreme Court in the case of Balwant Singh (dead) Vs. Jagdish Singh and others reported in (2010) 8 SCC 685, which reads as follows:



"Liberal construction cannot be equated with doing injustice to the other party. This balance has to be kept in mind by Court while deciding such applications and the expression 'sufficient cause' implies presence of a Legal and adequate reasons"

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12.A perusal of the records reveals that both the petitioners and the respondent claim the property and both are claiming the property through documents, of the year 1909. It is stated that the respondent is in possession of the property and the suit was filed in the year 2000 and the Second Appeal is filed in the year 2014. It is seen that the respondent has filed an E.P. Petition against the petitioner and the same is pending before the trial Court. It is stated that the first respondent died in the year 2013 itself. The Second Appeal itself was filed only after the death of the first respondent, but, without mentioning the same. The petitioner is the resident of the same village and he has attended the funeral function and that alone is sufficient. The petitioner cannot claim that he was not aware of the death of the Respondent.

13.The Second Appeal was dismissed on 28.02.2015. The Second Appeal was filed in the year 2013, while the first respondent was not alive. It is seen that the Second Appeal was dismissed on 20.02.2015 and subsequently, the petitioner has filed an E.P. Petition, on 16.10.2015. It is seen that the respondents filed two memos on 22.12.2016 and 08.02.2017 as if the second appeal is still pending. The only reason stated in the petition is that the previous counsel failed to comply the return, whereas the same counsel is appearing for the petitioner before the Trial Court till August-2018 and this fact was not denied by the petitioners.

14.In the above circumstances, the reasons stated in the affidavit filed in support of this petition are not satisfactory and hence, this Civil Miscellaneous Petition is dismissed.

sd/-
11/12/2018

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE FIRST ADDITIONAL SUBORDINATE JUDGE,
MADURAI.

<https://hcservices.ecourts.gov.in/hcservices/>
2 THE PRINCIPAL DISTRICT MUNSIF,
MADURAI TOWN.



+1. C.C. to M/S.K.C.RAMALINGAM Advocate SR.No.99643

+1. C.C. to M/S.M.KANNAN, Advocate SR.No. 23018

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ORDER

IN

CMP (MD) No.9036 of 2018

IN

SA (MD) No.153 of 2014

Date :11/12/2018

JM/VR MMS/SAR 3/17.12.2018/5P/5C