

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2019

PRONOUNCED ON : 10.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

C.M.P.No.4499 of 2019

in

S.A.SR.No.18794 of 2019

1.Hajira Kabir
2.Sulaiman Kabir
3.Sabnam Jameela .. Petitioners/Appellants

(3rd petitioner/appellant was represented by her Mother and Power Agent Hajira Kabir (the 1st appellant herein) the power document was recognised by the Lower Appellate Court by Order dated 23.06.2015 in CMP.No.20/2015 in A.S.No.25 of 2015)

Vs.

Sukria Mustafa .. Respondent/Respondent

Prayer :- This Civil Miscellaneous Petition has been filed under Section 5 of the Limitation Act, 1963, to condone the delay of 760 days in filing the above second appeal.

For Petitioners : Mr.R.Mubarak Basha

For Respondent : Ms.V.Srimathi

ORDER

This Civil Miscellaneous Petition has been laid by the petitioners/Appellants to condone the delay of 760 days in preferring the second appeal.

2.The suit in O.S.No.12890 of 2009 has been levied by the respondent/plaintiff for partition, permanent injunction and past and future mesne profits.

3.The abovesaid suit had been contested by the petitioners and it is seen that the abovesaid suit had been dismissed on 25.09.2014. Furthermore, the first appeal preferred by the respondent/plaintiff impugning the judgment and decree of the trial Court in A.S.No.25 of 2015 has also come to be dismissed on 11.08.2016. It is further seen that the respondent/plaintiff has preferred the second appeal No.230 of 2017 impugning the judgment and decree of the first appellate Court and the same is pending. Now, according to the petitioners, the first appellate Court, while disposing of the appeal, had given certain wrong and perverse findings against them and dismissed the first appeal, hence, according to the petitioners, inasmuch as they are required to challenge the perverse findings given against them by the first appellate Court, they had been necessitated to prefer the independent appeal and as there occurred the delay of 760 days in preferring the second appeal, to

condone the said delay, the present petition has been laid by the petitioners.

4.The respondent/plaintiff contested the abovesaid cause projected by the petitioners for the condonation of the delay and according to her, absolutely, there is no ground put forth by the petitioners for the condonation of huge and inordinate delay and hence, according to her, the present petition filed by the petitioners is liable to be dismissed.

5.As against the subject matter involved in the suit, admittedly, the appeal preferred by the respondent/plaintiff in second appeal No.230 of 2017 is pending and it is seen that the petitioners are parties in the abovesaid proceedings. Now, it is put forth by the petitioners that they had been advised to file independent appeal for challenging the perverse findings rendered against them by the first appellate Court and hence, they had been necessitated to prefer the independent appeal and as the delay had occurred in preferring the same, the present petition has come to be laid. However, absolutely, there is no ground put forth by the petitioners as to why they had not preferred the appeal in time and therefore, as rightly put forth by the respondent/plaintiff, inasmuch as no ground whatsoever has been put forth by the petitioners for the condonation of the delay, in my considered opinion, the delay cannot be condoned.

6.Furthermore, when according to the petitioners, they are necessitated only to prefer the appeal for impugning the perverse findings rendered against them by the first appellate Court, considering the scope and ambit of Order 41 Rule 22 CPC, it is found that the same could be agitated by the petitioners in the second appeal preferred by the respondent/plaintiff and in such view of the matter, the abovesaid reason projected by the petitioners for preferring the second appeal independently i.e. for impugning the perverse findings rendered against them, as such, do not merit acceptance.

7.In any event, as abovenoted, when there is no ground at all made out by the petitioners for the delay, resultantly, the petition deserves no acceptance.

In conclusion, the petition is found to be devoid of merits and hence, it is dismissed with costs. Consequently, SA.SR.No.18794 of 2018 is rejected.

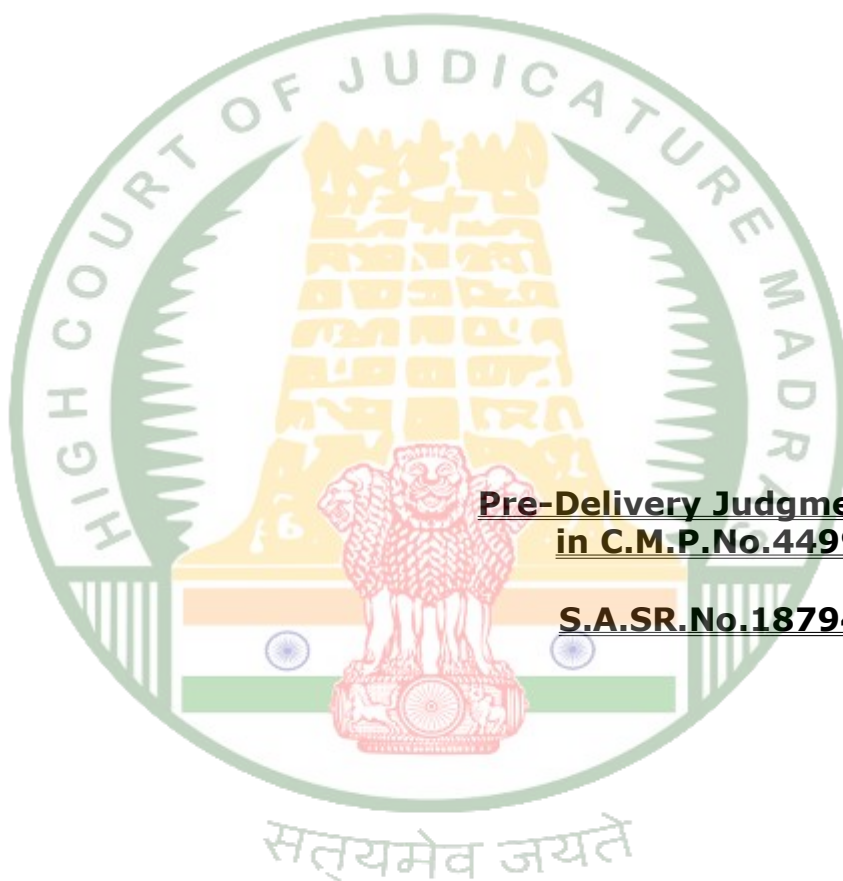
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To

10.07.2019

The Section Officer, V.R.Section, High Court, Madras.

T.RAVINDRAN, J.

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Pre-Delivery Judgment made
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