

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.9031 of 2019

in

S.A.SR.No.43879 of 2019

Vincent Lourdhenathan Dominique .. Petitioner/Appellant

Vs.

1.Josephine Shyla Dominique

2.Lenin Anand

@ Paquianadane Dominique ..

Respondents/Respondents

Prayer :- This Civil Miscellaneous Petition has been filed under Section 5 of the Limitation Act, 1963, to condone the delay of 1835 days in filing the above second appeal.

For Petitioner : Mr.R.Thiagarajan

For Respondent : Mr.R.Sreedhar
No.1

For Respondent : Mr.T.M.Naveen
No.2

ORDER

This Civil Miscellaneous Petition has been laid by the petitioner/Appellant to condone the delay of 1835 days in preferring the second appeal.

2. According to the petitioner, the first respondent herein has levied the suit against him and the second respondent herein for partition, permanent injunction and other reliefs and the abovesaid suit was decreed on 08.02.2008 and the preliminary decree is granted in favour of the first respondent /plaintiff as prayed for. Aggrieved over the same, according to the petitioner, he and his brother viz., the second respondent herein had preferred the first appeal in A.S.No.8 of 2013 before the first appellate Court and it is found that the first appellate Court had dismissed the abovesaid appeal and thereby, confirmed the judgment and decree of the trial Court. It is stated by the petitioner that the second respondent herein has preferred the second appeal No.1175 of 2014, impugning the judgment and decree of the first appellate Court and the same is pending. Further, according to the petitioner, he has been arrayed as the first respondent in the abovesaid second appeal levied by the second respondent.

3. The abovesaid facts are not in issue. Now, according to the petitioner, there occurred a delay of 1835 days in preferring his appeal, impugning the judgment and decree of the first appellate Court. It is not the case of the petitioner that he is not aware of the dismissal of the first appeal filed by him along with the second respondent by the first appellate Court. Thus, it is seen that the petitioner is fully aware of the

dismissal of the first appeal. If really the petitioner is aggrieved over the judgment and decree of the first appellate Court, he would have endeavoured to prefer the appeal challenging the same as done by the second respondent, however, the petitioner has not preferred any independent appeal. Now, according to the petitioner, the only cause projected by him for the delay is that on account of the pendency of the second appeal preferred by the second respondent in second appeal No.1175 of 2014, he has not preferred the second appeal independently earlier and now, according to him, as the second respondent is planning to withdraw the second appeal preferred by him in connivance with the first respondent jeopardising with interest, according to him, he has been necessitated to levy the independent appeal challenging the judgment and decree of the first appellate Court and hence, the delay had occurred.

4. In this matter, only the counsel for the first respondent has preferred the counter. However, the counsel for both the respondents strongly opposed the abovesaid petition levied by the petitioner for condonation of the delay. According to them, both the petitioner and the second respondent had preferred the first appeal impugning the judgment and decree of the trial Court. In such view of the matter, the petitioner, if at all, had been aggrieved over the dismissal of the same, he should have preferred an independent second appeal or should have joined along with the second respondent in preferring the second appeal

as done by them in the first appellate Court. On the other hand, the petitioner, despite having knowledge about the pendency of the second appeal preferred by the second respondent, had not endeavoured to prefer any independent appeal and therefore, according to the respondents, if the petitioner is permitted to prefer the appeal, after the condonation of huge delay, serious prejudice would be caused and further, according to them, it is only the petitioner, who has been causing hindrance in the disposal of the second appeal preferred by the second respondent on the pretext that his appeal is pending. Therefore, according to them, the petitioner has been dragging both the present matter as well as the second appeal preferred by his brother viz., the second respondent one way or the other to ensure that the first respondent/plaintiff is unable to enjoy the benefits of the decree obtained by her and hence, according to the respondents, the present petition preferred by the petitioner for the condonation of the huge inordinate delay, not based on any cause whatsoever, is liable to be rejected in toto and accordingly, prayed for appropriate orders.

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5.As rightly put forth by the respondents' counsel, when it is found that the first appeal had been preferred by the petitioner and the second respondent challenging the judgment and decree of the trial Court and when it is further seen that the petitioner is aware of the dismissal of the first appeal by the first appellate Court, if really, he is interested in

prosecuting the matter further, he should have preferred necessary second appeal impugning the same. However, despite having knowledge about the pendency of the second appeal preferred by his brother, the second respondent, he had not chosen to evince any interest to prefer an independent appeal. Inasmuch as the second respondent had already preferred the second appeal challenging the judgment and decree of the first appellate Court, in my considered opinion, if at all the petitioner has got any cause to urge in the matter, in support of his case, the same could be done by him even in the second appeal preferred by the second respondent, as admittedly, the petitioner is a party in the abovesaid second appeal. It is found that despite the pendency of the abovesaid second appeal preferred by the second respondent, from 2014 onwards for one reason or the other, the same could not be disposed of. Now, according to the respondents, only on account of the delay tactics adopted by the petitioner, the abovesaid second appeal could not be disposed of. Furthermore, the reason given by the petitioner that the second respondent is planning to withdraw the second appeal preferred by him in connivance with the first respondent with a view to jeopardise his interest has been vehemently repudiated by the respondents and according to them, the abovesaid reason is projected as a false cause for the delay and therefore, according to them, the reason projected for the delay deserves rejection. As regards the cause projected by the petitioner that the second respondent is endeavouring to withdraw the

second appeal, despite the opposition put forth to the same, the petitioner has not placed any material whatsoever even prima facie pointing to the same. In such view of the matter, when it is found that the petitioner has not placed any cause whatsoever for the condonation of the delay and even the alleged cause has not been buttressed by the petitioner by placing acceptable and convincing materials, at least, prima facie, in such view of the matter, I am not inclined to condone the delay and considering the facts and circumstances of the case in entirety, it is found that only on account of the delay tactics adopted by the petitioner, it is found that the second appeal preferred by the second respondent could not be proceeded further and therefore, no indulgence could be extended in favour of the petitioner whatsoever.

In the light of the abovesaid reasons, absolutely, there is no justification for entertaining the delay petition and the petition is found to be devoid of merits and hence, the same is dismissed. Consequently, SA.SR.No.43879 of 2019 is rejected.

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To

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

T.RAVINDRAN, J.

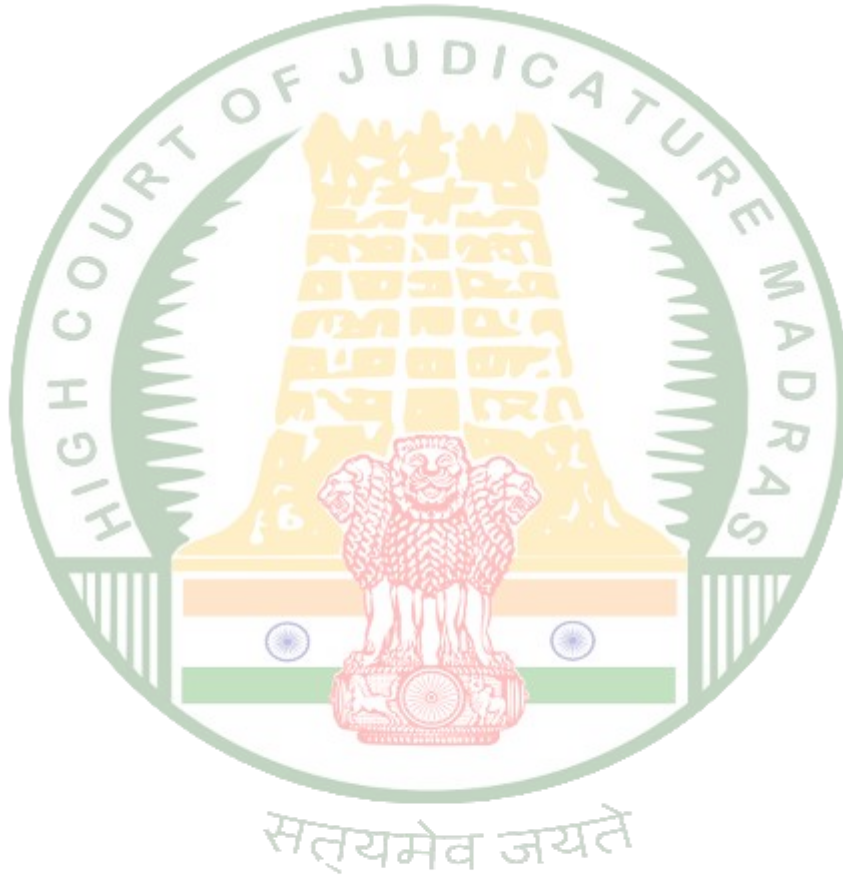
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**Pre-Delivery Judgment made
in C.M.P.No.9031 of 2019
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