

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2019

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

CMP.No.8779 of 2017
in
S.A.SR.No.40764 of 2017

1. Pedda Nagappa
2. Chinna Nagappa
3. Muniyappa
4. Krishnappa
5. Basappa

... Petitioners/ Appellants

Vs

- Doddappa (Died)
2. Pellappa
3. Basappa
4. Basamma
5. Chithappa
6. Chandrappa

(R2 to R6 brought on record as LRs of the deceased sole respondent namely Doddappa vide order of Court dated 31.10.2019 made in CMP No.5993, 5995 and 5998 of 2019 in SA.SR.No.40764 of 2017)

... Respondents/Respondents

C.M.P.No.8779 of 2017 is filed to condone the delay of 2774 days in filing the present Second Appeal in S.A.S.R.No.40764 of 2017.

S.A.SR.No.40764 of 2017 is filed under Section 100 of Civil Procedure Code against the decree and judgment dated 27.01.2009 passed in A.S.No.14 of 2008 on the file of Sub Court at Hosur, Krishnagiri District,

confirming the decree and judgment dated 29.08.2007 passed in O.S.No.204 of 2000 on the file of the District Munisif Court at Hosur, Krishnagiri District.

For Appellants : Mr.R.Jayaprakash

For R2 to R6 : Mr.P.M.Duraisamy

ORDER

This application has been filed by the petitioner / appellant seeking to condone the delay of 2774 days in filing the above Second Appeal.

2. In the affidavit filed in support of the petition, it has been stated that the 3rd petitioner underwent Angioplasty in the year 2010 and that the petitioners have sustained huge loss in the business and only after recovering from the illness and financial crisis in the year 2017, this appeal has been filed.

3. Resisting the averments made by the petitioners, the respondents have filed a detailed counter affidavit, stating that the delay of 7½ years has not been properly explained and the second appeal has been filed only with the ulterior motive to prolong the legal proceedings.

4. Heard both sides and perused the documents placed before this Court.

5. A perusal of the records would reveal that the Suit in O.S.No.204 of 2000 was filed by the respondent herein for declaration and injunction, based on Ex.A12 sale deed dated 26.10.1965 and Ex.A1 sale deed dated 22.03.1974. According to the respondent/plaintiff, the original owner of the suit property had two sons namely Nagappa and Muniappa and there was a oral partition. Pursuant to the same, the said Nagappa sold the suit property to one Chandira Chetty on 26.10.1965, from whom, the plaintiff had purchased the property in the year 1974 and through him, Exs.A2, A3, A4, A7 and A8 have been marked. Whereas, the appellants claimed that in an oral partition, the suit property in Survey No.157/18 has been allotted to Muniyappa, however in the attested records, the name of the owner was wrongly mentioned as Nagappa. Admittedly, the sale deed was executed on 26.10.1965. However, the appellants have not taken any steps till 2000, to set aside the said sale deed. Further, they have filed the second appeal against the concurrent findings of the Courts below, only in the year 2017, that too, with a delay of 2774 days in filing the same. Even according to the affidavit filed by the third petitioner, he had undergone Angioplasty in the year 2010 and suffered from financial

crisis, but no document was produced to substantiate the same.

6. Considering the aforesaid aspects, this Court is of the opinion that the petitioners have not shown sufficient cause for condoning the enormous delay of 2774 days in filing the appeal. In that view, this application is dismissed. Consequently, the second appeal stands rejected at SR stage itself. No costs.

11.12.2019

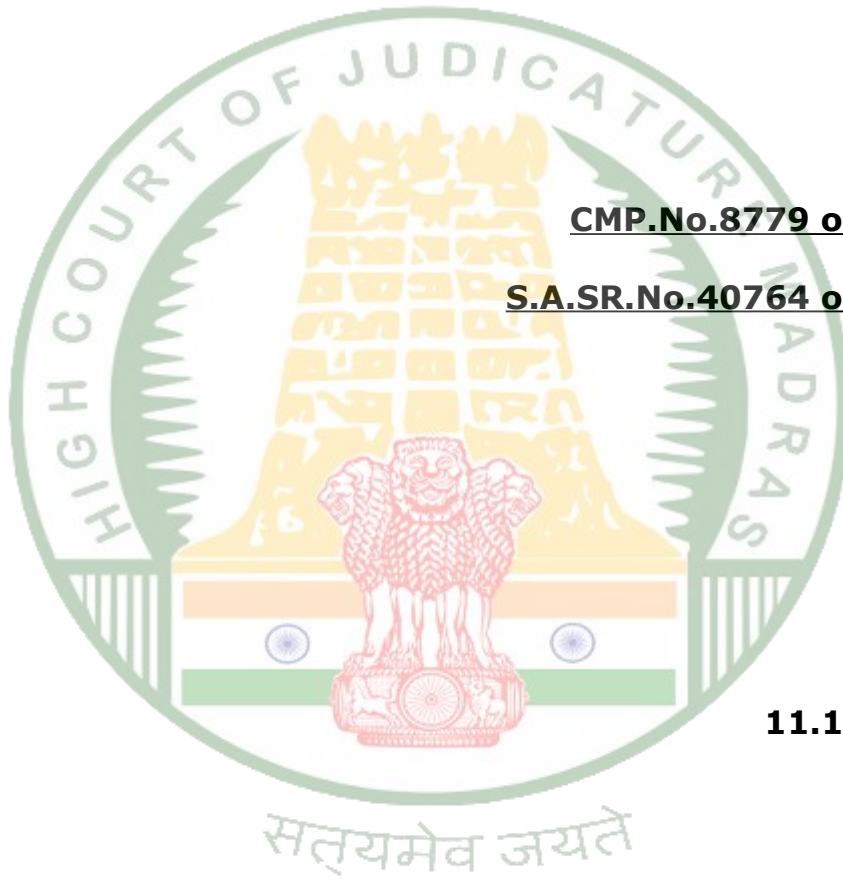
Index : Yes/No
Internet: Yes/No
Speaking Order/Non Speaking Order
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To

1. The learned Sub Judge at Hosur,
Krishnagiri District,
2. The learned District Munisif at Hosur,
Krishnagiri District.
3. The Sub Assistant Registrar,
Original Side,
High Court, Madras.

K.KALYANASUNDARAM, J.

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