

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.09.2019

PRONOUNCED ON :

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

C.M.P.No.21322 of 2018

in

A.S.Sr.No.68910 of 2018

1.Shanthi
2.Nithaiyan

...
Vs.

Petitioners

Kamalakanni (died)
1.Lakshmi
2.Ithayakani

...

Respondents

Prayer :- The Civil Miscellaneous Petition has been filed under Order XLI Rules 3-A r/w Order XLII Rule 1 CPC to condone the delay of 429 days in preferring this first appeal.

For Petitioners : Mr.P.Sesubalan Raja

For Respondent : Mr.A.Muthukumar
No.1

For Respondent : Mr.A.Vinoth Raj
No.2

ORDER

The Civil Miscellaneous Petition has been laid to condone the delay of 429 days in preferring the first appeal.

2. It is found that the suit for partition has been laid by the respondents 1 & 2 against the petitioners and the third respondent. The preliminary decree had been passed in the abovesaid suit on 24.04.2017. Impugning the same, the petitioners have preferred the first appeal.

3. Inasmuch as there occurred a delay of 429 days in preferring the first appeal, for the condonation of the abovesaid delay, the present petition has been laid by the petitioners.

4. Two reasons are given by the petitioners for the condonation of the delay. The first reason is, according to them, after the judgment and decree passed in the suit on 24.04.2017, it is put forth that there had been some mediation between the parties at the intervention of the elders so that the issues between the parties could be amicably settled amongst themselves. It is further put forth that the plaintiffs, who had initially accepted for the peaceful settlement, subsequently refused to sign the relevant documents with reference to the same and therefore stated that the elders, who had voluntarily mediated between the parties, withdrew from the mediation process and according to them, only thereafter they were necessitated to file the certified copies of the judgment and decree and the delay had occurred.

5. The first respondent has filed the counter contending that the abovesaid alleged mediation at the intervention of the elders subsequent to the judgment of the trial Court is false and according to them, there was no talk for settlement after the preliminary decree and therefore, there is no question of the respondents refusing to sign the documents with reference to the mediation. According to the respondents, only for the purpose of this petition, the abovesaid cause had been falsely alleged by the petitioners.

6. When it is found that the suit laid by the respondents 1 & 2 for partition had been vehemently contested by the petitioners and third respondent, in such view of the matter, to say that after the judgment of the trial Court, the parties had attempted to mediate amongst themselves at the intervention of the elders for settling the matter, as such, cannot be accepted in any manner, particularly, when the abovesaid cause has been seriously challenged by the respondents. With reference to the alleged mediation at the intervention of the elders, the petitioners have not come forward as to who were the elders who had attempted to mediate between the parties, what are the steps taken by them with reference to the same, what was the progress of the mediation and what were the documents agreed to be signed between the parties for effecting settlement and with reference to all the abovesaid facts,

absolutely there is no plea put forth by the petitioners in the petition and also equally there is no material also even prima facie put forth by the petitioners to sustain the abovesaid case. In such view of the matter, when the parties had been contesting the case tooth and nail and seeking their respective shares in the suit properties one way or the other, to say that the parties had mooted the mediation at the intervention of the elders after the judgment and decree had been passed in the matter cannot at all be accepted, particularly, in the absence of any material even prima facie pointing to the same. Therefore, the abovesaid cause projected by the petitioners for the delay is found to be totally unacceptable and as rightly put forth by the respondents, the same had been invented and put forth by the petitioners only for the purpose of the petition and therefore, the abovesaid cause cannot be construed as the sufficient cause for the condonation of the delay.

7. The next reason put forth by the petitioners for the delay is that after they had applied for the certified copies of the judgment and decree, the second petitioner was suffering from Jaundice and taking treatment and therefore, could not contact the counsel immediately. Even the abovesaid cause projected by the petitioners for the delay has been stoutly refuted and challenged by the respondents. Despite the same, it has not been pointed out by the petitioners as to when from the second petitioner had been suffering from Jaundice, with whom he had

been taken treatment with reference to the same, when he recovered from the same etc., and other than vaguely stating that he had been suffering from jaundice, no other material worth acceptance has been projected by the petitioners with reference to the proof of the same and therefore, as rightly contended by the respondents, the abovesaid cause has also been falsely created by the petitioners only for the purpose of the petition and accordingly, they are unable to substantiate the abovesaid cause with acceptable materials even prima facie. Further, as rightly put forth by the respondents, even assuming for the sake of the arguments that the second petitioner had been suffering from jaundice during the relevant period, nothing prevented the first petitioner from contacting the counsel and take efforts to prefer the appeal without delay. However, no such attempt has been made by the first petitioner in connection with the same. Therefore, the second reason also projected by the petitioners for the condonation of the delay cannot be termed as the sufficient cause for the condonation of the delay and hence, the same is rejected.

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8. In the light of the abovesaid factors, as rightly contended by the respondents, no sufficient cause has been projected by the petitioners for the condonation of the huge and inordinate delay. As rightly put forth, only with a view to prevent the respondents from reaping the fruits of the decree obtained by them, it is found that the petitioners have come

forward with the present petition without any cause and accordingly, unable to substantiate the same with acceptable and convincing materials.

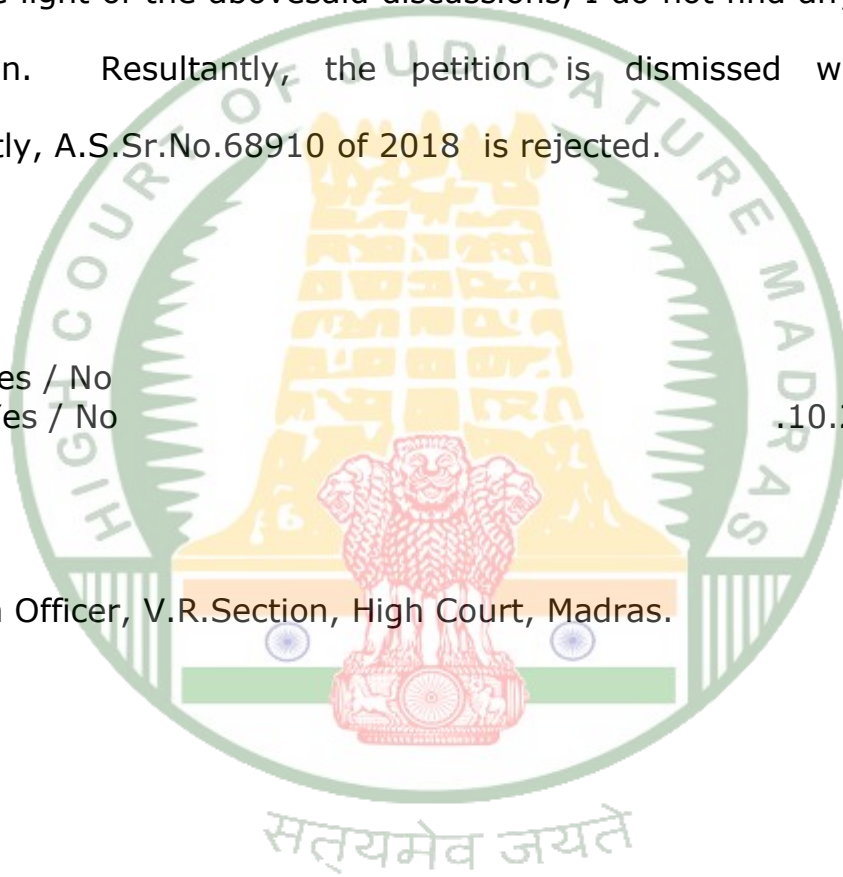
In the light of the abovesaid discussions, I do not find any merits in the petition. Resultantly, the petition is dismissed with costs. Consequently, A.S.Sr.No.68910 of 2018 is rejected.

Index : Yes / No
Internet : Yes / No
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To

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



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T.RAVINDRAN, J.

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Pre-Delivery Order made
in C.M.P.No.21322 of 2018
in
A.S.Sr.No.68910 of 2018

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To
The Hon'ble Mr.Justice T.RAVINDRAN

Most respectfully submitted
sms
P.A. To the Hon'ble Judges



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