

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.06.2019

PRONOUNCED ON : 03.07.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

CMP No.22579 of 2018

in

SA.SR.No.12639 of 2014

C.Marimuthu

... Petitioner

Vs.

1. P.V.Arumugam

2. Gurusamy

3. Mariammal

... Respondents

Prayer: Civil Miscellaneous Petition filed under Order 41 Rule 3A of CPC to condone the delay of 1090 days in filing the Second Appeal against judgment and decree dated 18.11.2010 made in A.S.No.99 of 2009 on the file of the Additional District Court / Fast Track Court No.IV, Bhavani, confirming the judgment and decree dated 31.12.2008 made in O.S.No.21 of 2006 on the file of the Sub Court, Bhavani.

For Petitioner

Mr.N. Manokaran

For Respondents

: Mr.A.V.Arun for R1.
R2 & R3 - No appearance.
Set exparte vide order
dated 28.06.2019.

ORDER

The petitioner has come forward with the abovesaid petition to condone the delay of 1090 days in preferring the second appeal.

2. It is found that the first respondent / plaintiff has levied the suit against the petitioner and the others for the relief of declaration that the registered sale deed dated 26.04.2006 is null and void and not binding upon him and the other creditors of the first defendant and for permanent injunction. The abovesaid suit was contested by the petitioner and the other defendants and after the contest, the suit had come to be decreed in favour of the first respondent / plaintiff. It is further seen that challenging the judgment and decree of the trial court, the petitioner has preferred the first appeal in A.S.No.99 of 2009 and the said appeal has also come to be dismissed on 18.11.2010.

3. According to the petitioner, he had applied for the certified copies of the judgment and decree of the first appellate court and the same was delivered to him and it is his case that the defendants 1 and 2, namely, the respondents 2 and 3 herein had informed him that they would look after his interest in filing the second appeal before the High Court and bonafidely believing their version, it is stated that the petitioner has not taken any steps in preferring the second appeal. The petitioner is a poor and rustic villager and also on account of the financial constraints and family situation, he was unable to take immediate steps to prefer the appeal and therefore,

it is stated that the abovesaid delay had occurred in preferring the second appeal and thereby prays for the condonation of the same.

4. The first respondent / plaintiff has seriously challenged the abovesaid reasons projected by the petitioner / appellant for the condonation of the delay and according to the first respondent / plaintiff, despite the knowledge of the dismissal of the first appeal by the first appellate court and also the obtainment of the certified copy of the judgment and decree, contended that the case of the petitioner that he had bonafidely believed the assurance of the respondents 2 and 3 that they would look after his interest in preferring the second appeal in the High Court and thereby not took steps to prefer the appeal are false and further according to the first respondent / plaintiff, the petitioner has independently preferred the first appeal and also preferred another suit in O.S.No.115 of 2017 with reference to the suit property and in the said suit one G.Suseela had filed an application to get herself impleaded and the said application was dismissed and the same was carried to the High Court by way of revision in CRP No.286 of 2011 and the petitioner has contested the abovesaid Civil Revision Petition and furthermore, the petitioner has also conducted another revision in CRP No.3897 of 2015 and other related cases and also contested the suit levied

by G.Suseela in O.S.No.280 of 2009 and therefore, the petitioner cannot now feign ignorance and state that the respondents 2 and 3 had assured to look after his interest in the High Court and further also disputed the reasons projected by the petitioner that on account of his financial condition and family situation he was unable to prefer the second appeal in time and, in toto, according to the first respondent / plaintiff, the reasons projected by the petitioner for the delay are false and lack bonafide and therefore, deserve dismissal.

5. The petitioner has suffered decree in the courts below. Challenging the same, he has preferred the second appeal. Inasmuch as there occurred the delay of 1090 days in preferring the second appeal, the petitioner has come forward with the present petition to condone the same.

6. As could be seen from the case projected by the petitioner, he is aware of the dismissal of the first appeal on 18.11.2010. According to the petitioner, he had immediately applied for the certified copies of the judgment and decree of the first appellate court. When it is seen that the petitioner has preferred the first appeal, in such view of the matter, his case that the respondents 2

and 3 had assured him that they would look after his interest in the High Court by way of preferring the second appeal, cannot at all be accepted. When it is seen that in the first appeal preferred by the petitioner, the respondents 2 and 3 are cited as respondents, therefore, to say that the petitioner, on believing the assurance given by the respondents 2 and 3, had not preferred the second appeal in time, cannot at all be accepted and as rightly put forth by the first respondent / plaintiff, the abovesaid reasons projected by the petitioner totally lack bonafide and deserve no acceptance in any manner.

7. As could be seen from the counter put forth by the first respondent / plaintiff, the petitioner is found to be contesting the other proceedings in the High Court independently and also prosecuting and defending the various suits independently in respect of the suit properties and the other properties, in such view of the matter, his case that he had not preferred the second appeal in time on account of the assurance given by the respondents 2 and 3 that they would look after his interest in the High Court, cannot, at all, be countenanced in any manner and has to be rejected in toto.

8. As further put forth by the first respondent / plaintiff, the other reasons projected by the petitioner that on account of his financial constraints and family situation, he was unable to prefer the appeal in time, with reference to the said factors, absolutely, there is no material, at least prima facie, put forth by the petitioner and as rightly argued, the same had been projected only to earn the sympathy without any basis.

9. In the light of the abovesaid factors, it is seen that no acceptable case has been projected by the petitioner for the condonation of the delay and even the reasons projected for the delay had not been substantiated by the petitioner by prima facie materials and in such view of the matter, there is no justification for the condonation of the delay. Resultantly, CMP No.22579 of 2018 is dismissed and consequently, the Second Appeal in S.R.No.12639 of 2014 is rejected.

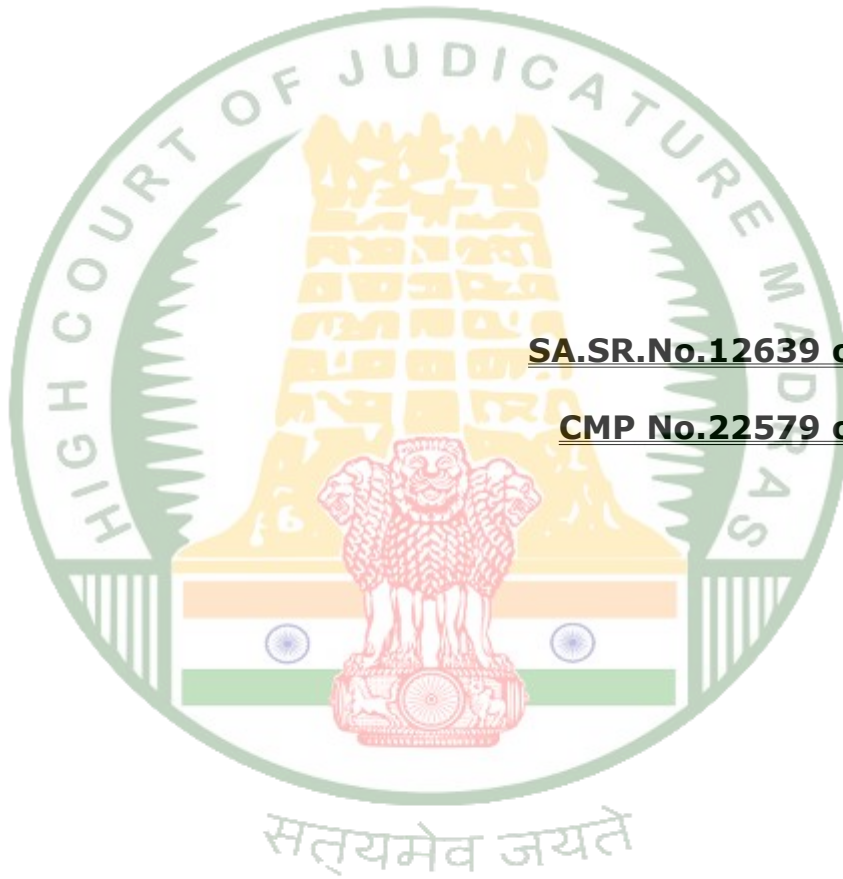
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T.RAVINDRAN,J.

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SA.SR.No.12639 of 2014
and
CMP No.22579 of 2018

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03.07.2019