



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

C.M.P.(MD)No.6185 of 2019
in
S.A.(MD)No.SR26744 of 2017
and
S.A.(MD)No.SR26744 of 2017

The State represented
by its District Collector,
Kanyakumari.

: Petitioner/Appellant in both cases

vs.

S.Padmanabapillai : Respondent / Respondent in both cases

PRAYER: Civil Miscellaneous Petition filed under Order 41 Rule 3 (A) of Code of Civil Procedure, 1908, to condone the delay of 4930 days in filing the second appeal.

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, 1908, to set aside the judgment and decree passed by the II Additional Subordinate Judge, Nagercoil, in A.S.No.50 of 2002 dated 09.04.2003 in confirming the judgment and decree passed by the Principal District Judge, Nagercoil, in O.S.No.837 of 1998, dated 28.08.2001.

For Petitioner/Appellant : Mr.R.Sethuraman
Special Government Pleader

For Respondent / Respondent : No Appearance

ORDER

Notice sent to the respondent is returned with an endorsement of "Not known". The address of the respondent shows that he is residing in the State of Kerala and the proceedings also shows the same address, as the place, where the respondent resides.

2.The appellant is the State, represented by the District Collector, Kanyakumari. The respondent filed the suit for declaration of his title and for issuance of patta in the property, which according to the petitioner/appellant, is a water



body. The suit was decreed and the lower Appellate Court also confirmed the judgment and decree of the trial Court. Aggrieved by the concurrent findings of the Courts below, the present second appeal is filed.

3. Stating that the property, which is the subject matter of this petition/appeal, is a water body and it is maintained for the welfare of the public, the present petition is filed to condoned the delay.

4. In the affidavit filed in support of this petition, except the statement regarding the merits of the case, the explanation offered by the petitioner reads as follows:

"10. I respectfully submit that on the demise of the plaintiff before the lower Courts, there is no dispute as to the legal representative between one Vimalkumar and one Sivanpillai, both of them are contesting for the patta over the suit property on the strength of different unregistered Will purported to have been executed by the deceased respondent/plaintiff.

11. I submit that after granting the certified copy of the judgment and decree in A.S.No.50 of 2002, and after getting approval from the higher authorities, the present second appeal has been filed on 04.07.2017. I am advised to stated that the petitioners are having fair chances of success in the appeal. I pray this Honourable Court to treat the memorandum of grounds of second appeal as part and parcel of the affidavit. Hence, there is a delay of 4930 days in filing the second appeal. The delay is neither wilful nor wanton but due to the reasons stated above, the petitioner would be put to irreparable loss and hardship."

5. Except stating that the delay is neither wilful nor wanton, absolutely, there is no reason stated by the petitioner to condone the inordinate delay of more than 13 years. When the delay is more than 13 years in filing the second appeal, the contention, that the delay was on account of getting approval from the higher authorities, cannot be accepted. The District Collector is the authority, who can decide whether the appeal should be filed or not. He need not expect anyone for getting approval before filing the second appeal. Though this Court normally shows lenience in deciding the application filed under Section 5 of Limitation Act, 1963, having regard to the fact that no reason is stated in the affidavit filed in support of this petition and the delay is not explained, this court is unable to accept the cause for delay. Hence, this Court is not inclined to entertain this Petition.



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Accordingly, this Civil Miscellaneous Petition is dismissed and the Second Appeal is rejected at SR stage itself.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The II Additional Subordinate Judge, Nagercoil.

2.The Principal District Judge, Nagercoil.

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cmr

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