



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.10.2019

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THE HONOURABLE **MS.JUSTICE P.T.ASHA**

C.M.P. (MD)No.8272 of 2019  
in S.A. (MD)No.SR64014 of 2019

- 1.The State of Tamil Nadu represented  
by the District Collector,  
Kanyakumari District, Nagarkovil,  
Agasteeswaram Taluk,  
Kanyakumari District.
- 2.The Tahsildhar,  
Kalkulam Taluk,Office at Padmanathapuram,  
Thuckalay Village, Kalkulam Taluk,  
Kanyakumari District. ... Petitioners / Appellants

Vs.

S.Padmanabapillai

...Respondent/Respondent

PRAYER in C.M.P.(MD)No.8272 of 2019: Miscellaneous petition filed under Order 41 Rule 3A r/w under Order 42 Rule 1 of C.P.C., to condone the delay of 3379 days to file second appeal against decree and judgment in A.S.No.37 of 2009 on the file of the Subordinate Judge, Padmanathapuram dated 01.03.2010 confirmed decree and judgment in O.S.No.173 of 2006 on the file of the Principal District Munsif Court, Eraniel dated 06.09.2007.

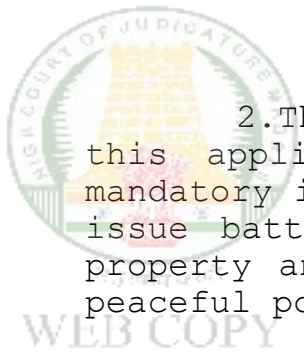
PRAYER in S.A (MD)No.SR64014 of 2019: This Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree in A.S.No.37 of 2009 on the file of the Subordinate Judge, Padmanathapuram dated 01.03.2010 confirming decree and judgment in O.S.No.173 of 2006 on the file of Principal District Munsif Court, Eraniel dated 06.09.2007.

For Petitioners : Mr.Gunaseelan Muthiah,  
Additional Government Pleader

For Respondent : No Appearance

**ORDER**

The above Civil Miscellaneous petition has been filed to condone the delay of 3379 days in filing the second appeal.



2.The facts in brief which are necessary for disposing of this application is that the respondent had filed a suit for mandatory injunction against the appellants herein to direct them to issue batta and tax payment with reference to the suit schedule property and injunction restraining them from interfering with his peaceful possession and enjoyment of the suit property.

3.The suit schedule property originally belongs to one Daniel and he purchased the property in the year 1069 ME(1894 AD) and had been possession and enjoyment of the same and after his demise, his son Perinbamoni succeeded the property and had been possession and enjoyment of the same. While so, the then Travancore-Cochin Government wrongly classified the property as puramboke and a case was also booked against the said Perinbamoni. The said Perinbamoni, thereafter, filed a suit in O.S.No.58 of 1112 ME (1937 AD) against the Dewan of Travancore for declaration of title and possession over the plaint scheduled property and for setting aside the puramboke decision. The said suit was decreed on 27.03.1942 in favour of the said Perinbamoni.

4.While in enjoyment of the said property, the said Perinbamoni had executed a registered will deed in favour of his son Daniel Selvanayagam. On the death of said Perinbamoni and Daniel Selvanayagam, the legal heirs of the Daniel Selvanayagam derived title over the property and they had sold the plaint scheduled to the plaintiff on 15.12.1986 and sale deed was registered in document no.3378 of 1986 on the file of the Eraniel Sub Registrar's Office.

5.After purchase, the plaintiff came to realize that the patta had not been issued in respect of the suit property and the classification continued to remain as Government puramboke in the revenue register, despite the decree in O.S.No.58 of 1112. The plaintiff had thereafter filed a petition before the first defendant to correct the entry, but however, no action was taken and on the contrary, the defendants were taking steps to distribute the said property to landless people. Therefore, she was constrained to file a suit.

6.The learned Principal District Munsif Court cum Judicial Magistrate, Eraniel by a judgment and decree dated 06.09.2007 was pleased to dismiss the suit with reference to the relief of mandatory injunction and decreed the suit with reference to the relief of permanent injunction. The said judgment and decree was challenged by the defendants/Officials in A.S.No.37 of 2009 on the file of the Subordinate Judge, Padmanathapuram and a cross appeal was filed by the plaintiff. By a judgment and decree dated 01.03.2010, the learned Subordinate Judge was pleased to allow the cross appeal and dismissed the appeal filed by the defendants/Officials. Challenging the same, the appellants had filed this second appeal before this Court with an inordinate delay



7.The only reason that has been given for the delay is as follows:

"Actually I ought to have been to file this case within 90 days from the date of receipt of the copy of the appellate court decree and judgment. But unfortunately we are not able to file this case within stipulated time. Concern suit clerk who dealt the civil case post still vacant. Further I am not able get order copy within time limit. After got judgment copy I got legal opinion. In between 3379 days delay was occurred. Please said delay may be condoned. Otherwise we will put irreparable loss and hardship."

8.The above reason does not make out sufficient cause for condoning the delay. That apart, the appellants are bound by the judgment in O.S.No.58 of 1112.

9.Considering the fact that sufficient cause has not been shown by the appellants, this civil miscellaneous petition is dismissed. Consequently, the second appeal, which is in SR stage, is rejected.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge, Padmanathapuram.

2.The Principal District Munsif Court, Eraniel.

+1cc to M/s.Special Government Pleader,SR.No. 95945

C.M.P. (MD)No.8272 of 2019  
in

S.A (MD) No.SR64014 of 2019  
31.10.2019

KK/SAR/03.12.2019/3P-4C/