



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.10.2019
CORAM**

THE HONOURABLE MS.JUSTICE P.T.ASHA

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**C.M.P (MD) No.6675 of 2018
in
S.A (MD) No.SR28635 of 2018**

Perimanampillai (died)

- 1.Periyasamy
- 2.Murugesan
- 3.Kamatchi
- 4.Veeramani
- 5.Pandiarajan
- 6.Mallika

... Petitioners/Appellants

Vs.

- 1.Rajammal
 - 2.Pakiammal (died)
 - 3.Kamatchi
- (Memo in USR is recorded as 2nd respondent died, Respondents 1 &3, who were already on record and recorded as Legal heirs of deceased second, vide order dated 17.07.2019)

... Respondents/Respondents

PRAYER (C.M.P. (MD) No.6675 of 2018): Miscellaneous petition filed under Section 5 of the Limitation Act, to condone the delay of 1995 in filing restoration the appeal against A.S.No.31 of 2009 on the file of the Sub Court, Pudukkottai, dated 20.01.2012.

PRAYER (S.A (MD) No.SR28635 of 2018): This Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree in A.S.No.31 of 2009 on the file of the Sub Court, Pudukottai, dated 20.01.2012, confirming the Judgment and Decree in O.S.No.211 of 2000 on the file of the District Munsif Court Cum Judicial Magistrate, Keeranur, dated 20.01.2009.

For Petitioner : Mr.N.Balakrishnan

For R1 : Mr.G.Mathavan

R2 : Died

R3 : Mr.K.P.Narayana Kumar



ORDER

The petition in question has been filed to condone the delay of 1995 days in filing the Second Appeal against the Judgment and Decree in A.S.No.31 of 2009 on the file of the Sub Court, Pudukkottai, dated 20.01.2012.

2.The reason given for the delay is that the parties after the dismissal of the first appeal filed by the appellants had resolved their disputes by entering into a compromise, dated 03.05.2012. In the said compromise agreement the 'A' Schedule property therein was allotted to the appellants and 'B' Schedule was allotted to the respondents. The arrangement was arrived by the respondents and therefore, the petitioners/appellants had not taken any steps to file the Second Appeal. However, to their shock, the appellants received the summon from the Executing Court in E.P. No.1 of 2018, calling upon them to appear before the Court on 13.07.2018. On receipt of the notice, the petitioners herein had approached the respondents, but they did not respond favorably and all efforts failed. Therefore, the petitioners herein have been constrained to file this second appeal. In view of the above circumstances, there is a delay of 1995 days in preferring the Second Appeal. The above reason has been attributed for the delay.

3.The counsel appearing for the petitioners would contend that the Appellants were lulled into the relief that the dispute between the appellants and the respondents had been resolved by virtue of the Compromise Agreement. He would therefore contend that the delay was neither wilful nor wanton. He would further contend that in the light of the reasons given, this Court should adopt a liberal approach, particularly when the appellants have a good case to urge in the Second Appeal.

4. In support of his contentions, the learned counsel for the petitioners relied upon the order of the Hon'ble Supreme Court reported **in 2017 SAR (Civil) 1003 (K.Subbarayudu and others Vs.The Special Deputy Collector)** and also replied upon the orders of this Court reported **in 2014 (4) TLNJ 37 (Civil), (Raja Rusbutheen Vs.N.Periyasamy) and 2017 (3) CTC 445 (S.Nirmaladevi Vs.T.R.Rangasamy)**, respectively.

5.The respondents had filed a counter affidavit inter alia denying the said compromise and they have gone on record to state that the compromise agreement itself is a false and forged document. The respondents would further submit that the cause that has been shown for the delay is false. The Appellate Court had dismissed the appeal filed by the appellants on 20.01.2012. However, the compromise agreement would read as if the appeal was pending. It is the case of the respondents that the compromise memo is of a recent origin and has been created by the petitioners/appellants to create



a semblance of a cause of action for condoning the delay. Hence, the respondents prayed to dismiss the petition.

6. Heard the counsels on either side.

7. It is seen from the records that the earlier suit in O.S.No.392 of 1991 was filed by the deceased, first petitioner herein, namely, Perimanampillai (died) for injunction in respect of the house which form part of the 'A' Schedule property in the settlement deed, dated 20.05.1968. The said suit was contested by the plaintiffs in the instant suit who are the respondents herein that the settlement deed dated 20.05.1968 became non-est on account of the execution of the cancellation deed dated 25.02.1975 by the said Arumugam Pillai followed by his Will dated 25.07.1975 which was a registered Will in respect of his properties and on the death of Arumugam, on 10.10.1988, the petitioners herein had become the absolute owners. The suit was decreed, however, no appeal has been filed against the Judgment and Decree made in O.S.No.392 of 1991. In fact, the earlier proceedings itself, the settlement deed of the year 1968, was the subject matter of the suit and the suit filed by the petitioners/appellants was dismissed. The suit in O.S.No.211 of 2000 filed by the respondents/plaintiffs was dismissed as early as on 20.01.2009, against which, an appeal in A.S.No.31 of 2009 has been preferred by the appellants and the same was dismissed by the Sub Court, Pudukkottai on 20.01.2012. After dismissal of the first appeal, no steps have been immediately initiated by the petitioners/appellants. Except for the reason that both parties have entered into the compromise and resolved the matter between themselves, no valid reason has been stated by the petitioners/appellants to condone the delay of 1995 days for filing the second appeal. The reason given for the delay is also refuted by the respondents and further the respondents have alleged forging of the signature in the said deed. The Hon'ble Supreme Court in the Judgment reported **in 2008(17) SCC 448 (Pundlik Jalam Patil (Dead) by L.Rs.v. Executive Engineer, Jalgaon Medium Project and another)**, had observed as follows:

"12.... In our considered opinion, incorrect statement made in the application seeking condonation of delay itself is sufficient to reject the application without any further inquiry as to whether the averments made in the application reveal sufficient case to condone the delay. That a party taking a false stand to get rid of the bar of limitation should not be encouraged to get any premium on the falsehood on its part by condoning delay. (See Binod Bihari Singh v.Union of India.")

8. Considering the above facts and circumstances of the case and also considering the fact that the petitioners have not given any sufficient reasons for the delay of 1995 days in filing the second appeal and the Judgment cited supra, this Civil Miscellaneous



Petition is dismissed and consequently, the second appeal, which is in SR stage, is rejected. No costs.

Sd/-

Assistant Registrar (AD-I)

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// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Subordinate Judge, Pudukkottai.
2. The District Munsif Cum Judicial Magistrate
Keeranur
3. The Section Officer
V.R.Section (2 Copies)
Madurai Bench of Madras High Court
Madurai

+1.CC. To Mr.K.P.Narayana Kumar, Advocate in SR No.90944

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