



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.10.2019

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

CMP(MD)No.9370 of 2018

and

SA(MD)No. SR39121 of 2018

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Kulasekharam Town Panchayat,
Rep. by its Executive Officer,
Kallikulam Taluk,
Kanyakumari District.
Defendant

... Petitioner/Appellant/1st

Vs.

1.A.Thanka Bai

..1st Respondent/1st Respondent/
Plaintiff

2.C.Rajarathinam @ Selvam

3.R.Nagappan

... Respondents 2 and 3/Respondents
2 & 3/Defendants 2 & 3

Prayer in C.M.P: This petition is filed under Section 5 of Limitation Act to condone the delay of 5299 days to file the second appeal.

Prayer in Second appeal: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 10.12.2003 passed in A.S.No.121 of 2000 on the file of the Subordinate Court, Padmanabhapuram confirming the judgment and decree dated 07.07.2000 passed in O.S.No.256 of 1998 on the file of the Additional District Munsif, Padmanabhapuram.

For Petitioner : Mr.J.Gunaseelan Muthiah

For Respondents : No appearance

* * * * *

JUDGMENT

This above application has been filed by the Executive Officer of the Kulasekaram Town Panchayat to condone the delay of 5299 days in filing the Second Appeal.

2. The reasons for the delay has been stated in paragraph No.5 which reads as follows:

'Inordinate delay is neither willful nor wanton. Every year, the Executive Officer was transferred from one place to another place. Some person took charge in this year. The said Officer is not able to know the real position of the case to file the Second Appeal within a time limit'.

3.Apart from these reasons, no other reason has been given for the extraordinary delay of 5299 days.



4. The facts in brief to dispose of the above petition are as follows:

The respondent had filed the suit for permanent injunction in respect of 14 coconut trees standing in R.S.No.203/2 in Paravai Village in Kanyakumari District. The case of the plaintiff is that the plaintiff had obtained the 2-C patta from the revenue authorities. The vendors have been in enjoyment of the same in the same capacity. While so, the Executive Officer of the Kulasekaram Town Panchayat the defendants 2 and 3 tried to destroy the coconut trees contending that they are owners of the land and that they intended to form a road therein. The defense that has been raised by the appellant herein is that the land belonged to them and further they had no intention of forming a road and that they had not cut down the trees. The trial court however after the detailed contest by the judgment and decree dated 07.07.2000 had held that the plaintiff has proved the cause of action and the trial court decreed the suit granting injunction against the appellant and other defendants.

5. Challenging the said judgment and decree, the first defendant alone who is the appellant herein had filed A.S.No.121 of 2000 on the file of the Subordinate Court, Padmanabhapuram. Once again after the contest, the appeal was dismissed confirming the judgment and decree of the trial court. The judgment and decree in the first appeal was passed on 10.12.2003 and the instant Second Appeal has been filed only on 11.09.2018.

6. The appellant has therefore moved this application for condoning the delay. As stated supra, only reason adduced for the delay has been extracted in paragraph No.2 supra. This frequent change of the Executive Officer however did not preclude the plaintiff from contesting the suit since 1998 and thereafter. The judgment in A.S. No.121 of 2000 was passed in the year 2003. The reason that is now put forward appears to be made only for the purpose of making out a case for condoning the delay and lacks bonafides. The appellant has not come forward with the sufficient reasons for condoning the delay.

7. In the case of **Pundlik Jalam Patil (dead) by lrs. Vs. Executive Engineer Jalgaon Medium Project and another** reported in **(2008) 17 SCC 448**, the Hon'ble Apex Court has held that where the public authority has taken falsehood in order to get over the bar of limitation, the Court cannot encourage such falsehood by condoning the delay. Further, in the case of **Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai** reported in **(2012) 5 SCC 157**, the Hon'ble Apex Court has held that the reasons, which were given for the delay, was not specific and appeared to be concocted and therefore, the delay could not be condoned.

8. In the light of the above judgments and the fact that in the instant case no reason whatsoever has been put forward, I am of the



view that the delay cannot be condoned.

9. In view of the above, this application is dismissed. Consequently, the Second Appeal is dismissed at SR stage itself.

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Sd/-

Assistant Registrar (AD II)

// True Copy //

Sub Assistant Registrar(CS)

CM

+1CC TO MR.J.GUNASEELANMUTHIAH, ADVOCATE, SR NO.93735

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KK/SAR/11.12.2019/3P-2C/