

IN THE HIGHS COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM:

THE HONOURABLE MR.G.K.ILANTHIRAIYAN

S.A.NO.1915 OF 1991

1.Natarajan
2.Duraisamy
3.Rajathi
4.Sarasu
5.Perumayee

.. Appellants/
Defendants 2, 3, 5, 6 & 7

Vs.

Periyanna Gounder

.. Respondents/Plaintiffs

Prayer:

Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree dated 30.04.1991 and made in A.S.No.22 of 1988 on the file of Sub-Ordinate Judge of Namakkal as confirmed the judgment and decree dated 15.07.1987 made in O.S.No.51 of 1982 on the file of District Munsif, Rasipuram.

For Appellant : Mr. Muthumani Doraisami

For Respondents : R1 - Died

J U D G M E N T

This second appeal has been filed as against the judgment and decree dated 30.04.1991 and made in A.S.No.22 of 1988 on the file of Sub-Ordinate Judge of Namakkal as confirmed the judgment and decree dated 15.07.1987 made in O.S.No.51 of 1982 on the file of District Munsif, Rasipuram.

2. M.P.No. 2 of 2009 has been filed to condone the delay of 835 days in filing the review application in the common order passed in C.M.P.No.10598 of 2003 in S.A.No.1115 of 1991 who are all the defendants 2 to 7 in the suit filed by the plaintiff in O.S.No.51 of 1982. The suit filed by the plaintiff for specific performance and the same was decreed on 15.07.1987. Aggrieved by the same, the defendants filed A.S.No. 22 of 1998 and the same was also dismissed by the judgment and decree dated 24.08.2011. Aggrieved by the same, the defendants filed an

second appeal in S.A.No.1915 of 1991. Pending the appeal, the plaintiff died. Eventhough, they did not take any steps to implead the legal heirs of the deceased plaintiff, after period of 12 years, they took an application to implead the legal heirs of the deceased 2nd plaintiff along with condoned delay petition. This Court, by an order dated 09.03.2006 passed detailed orders in C.M.P.No.10596 and 10598 of 2003 and dismissed the applications. The relevant portion of the order reads as follows:-

"5. In the above case, the parties were rustic and illiterate villagers who belonged to different families, different villages and their Lordships observed that there was nothing to show that the delay was mala fide, intentional or any dilatory tactics were adopted and hence the delay was condoned.

6. But, in the case on hand, the parties are living in one and the same building and it cannot be said that they were not aware of the death of the first respondent. The delay is more than 12 years. There are other litigation between the parties and it cannot be said that the petitioners are ignorants or rustic.

7. Mr.T.R.Rajaraman, learned senior counsel appearing for the respondents while reiterating the contents of the counter affidavit submitted that the petitioners are not entitled to condonation of the inordinate delay, which is a discretionary relief, when the petitioners have not explained the delay to the satisfaction of the court. He also relied upon the judgment of the Apex court in State of Gujarat Vs. Sayeed ZI Mohammed Bakir El Edross, reported in AIR 1981 SC 1921, wherein their Lordships have held that when no cause has been shown for condonation of delay for setting aside the abatement, and even if there is a strong case on merits for the appellants, the same will not be a ground for condonation of the delay and dismissed the appeal. Learned Senior Counsel also contended that the judgment of this Court reported in 1981(2) SCC 788 relied upon by the learned senior counsel for the petitioners for the proposition that the delay may be condoned on payment of cost by the counsel on record cannot be made applicable since in present case the counsel on record has not filed any affidavit that it is their mistake and hence the delay may be condoned by putting them on heavy terms.

8. In the present case there is a delay of 12 long years and there is no satisfactory explanation offered by the petitioners for such huge delay. As already observed, the petitioners are living in the same building. The plea of ignorance cannot also be

accepted as there is another civil suit between the parties which is at the stage of final decree proceedings. It is also submitted by the learned Senior Counsel for the respondents that the valuable rights have accrued to the respondents during the pendency of this matter which shall not get dissipated by allowing these petitions. It is also not the case of the petitioners that they have a very strong case i.e., arguable points of facts and law are involved in the case and the parties would be prejudiced very much if the delay is not condoned. Moreover, by dismissing these petitions, the entire case will not come to an end, but the petitioners/appellants would pursue the matter as against other respondents."

3. This Court finds no merits in the application for condone the delay in setting aside the abatement. Now, the present review application has been filed to review the said order passed by this Court with the delay of 835 days in filing the review application. In the affidavit filed in support of the condone delay petition, they have not stated any valid reason for the delay in filing the review application. Therefore, no specific reasons stated in the affidavit to satisfy this Court to condone the delay. Hence, these petitions are devoid of merits and dismissed.

4. In view of the above discussion, this second appeal also dismissed as abated. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To:-

1. The Sub-Ordinate Judge, Namakkal.
2. The District Munsif Court, Rasipuram.

Copy To

The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.T.R.Rajaraman, Advocate in Sr.No.13869

S.A.No.1915 of 1991

PA(CO)
CS/15/12/2020