

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.P.No.11185 of 2018

in

A.S.SR.No.29731 of 2018

1.P.Suresh Kumar
2.Vijayalakshmi
3.Seethalakshmi

..Appellant

Vs.

1.V.Paramasivam
2.Sakthivel
3.P.Anandakumar
4.Ramammal
5.Palaniammal
6.N.Sundaram
7.Jayanthi
8.Sargunasundari
9.V.Usha
10.R.Latha
11.G.Kamala
12.Sridevi
13.C.N.Nagalakshmi
14.Valliammal
15.Ramakal
16.R.Nija

.. Respondents

PRAYER: Civil Miscellaneous Petition filed under Order 41 Rule 3(A) of C.P.C, to condone the delay of 308 days in filing the first appeal.

A.S.SR.No.29731 of 2018 is filed under Section 96 of Civil Procedure Code, against the judgment and decree dated 18.01.2017 of the Additional District Judge, Coimbatore in O.S.No.432 of 2011.

For Petitioner : Mr.N.Chinnaraj

For respondents : Mr.V.Sivakumar
for RR6 & 10
Mr.R.Marudhachalamurthy
for R12.
Non-appearance for RR1, 3, 4, 7
9, 11, 15, 16

ORDER

The miscellaneous petition is filed to condone the delay of 308 days in filing the appeal suit against the judgment and decree dated 18.01.2017 passed in O.S.No.432 of 2011 on the file of the learned V Additional District Judge, Coimbatore.

2. The plaintiffs are the appellants in the appeal suit and the original suit was instituted for partition. The suit was dismissed mainly on the ground that the same is barred by limitation. The Trial Court made a finding that the suit was instituted during the year 2011 and after a prolonged period, the said sale agreement was not challenged . On such grounds, the Trial Court arrived at a conclusion that the suit itself is clearly barred by limitation.

3. The miscellaneous petition is filed to condone the delay of 308 days. The learned counsel for the petitioner made a submission that

the delay is neither willful nor wanton. The reasons stated in the affidavit filed in support of the miscellaneous petition are that after receipt of the copies, the counsel informed the petitioner only in the month of May 2017. Thereafter, the petitioner was not well and further, there was certain events in the family, and so, he could not meet the counsel to discuss about the case. It is further stated that the office of the lower court counsel had been white washed on 27.07.2017 for pooja festival and while cleaning the office, the case bundle was misplaced. Subsequently, the Lower court counsel's clerk had find out the bundle along with certified copy of the order on 10.11.2017. Thereafter, the petitioner preferred the appeal suit before the High Court. Even in between, it is stated that he was admitted in hospital on 23.11.2017, due to viral fever.

4. The learned counsel appearing on behalf of the respondents rebutted the said reasons by stating that in July 2017, there was no festival and the reasons stated are false. It is contended that in respect of admission of the first petitioner in the hospital, no proof has been filed, more specifically, the discharge summary has not been filed. This apart, three petitioners filed a petition and no reason has been stated in respect of other two petitioners who are all capable of

filing affidavit or grounds in the appeal suit or in the miscellaneous petition. Citing all these reasons, the learned counsel for the respondents made a submission that the reasons are false, filmsy and frivolous and there is no proof to establish such reasons. The learned counsel for the respondents further contended that the suit was dismissed on the ground that the same is barred by limitation and therefore, there is no point in considering even the condone delay petition filed for the purpose of entertaining the appeal suit.

5. This Court is of the considered opinion that huge delay in filing the appeal cannot be condoned in a routine manner. The reason for delay must be explained and the genuinity of reason is to be considered by the Court. Law of limitation is substantive and therefore, the Courts cannot exercise the discretionary power in a mechanical manner. The power of discretion is to be exercised judicially and by recording the reasons for condonation of delay. Filing the appeal suit within the time limit is the rule and condonation of delay is an exception wherein the Court has to exercise the discretionary power only if valid reasons are assigned by the party approaching the Court with delay. Thus, unexplained delay are to be construed as an uncondonable delay. Thus, uncondonable delay cannot be condoned

without any proper reasons. Thus, the courts are bound to record the reasons for condonation of huge delay. This being the principles to be followed, this Court is of the opinion that the suit itself was dismissed on the ground that the same is barred by limitation and the appeal suit is filed after a huge delay of 308 days.

6. A perusal of the reasons stated in the affidavit filed in support of the miscellaneous petition reveals that the reasons have not been substantiated nor proved. On reading of the affidavit, it is seen that the reasons are untenable and the learned counsel for the respondents also rebutted the reasons by substantiating the same. Therefore, the reasons are not candid nor convincing. Based on such flimsy and false reasons, the delay of 308 days cannot be condoned at all. This being the factum, this Court is not inclined to consider the miscellaneous petition. Accordingly, the civil miscellaneous petition is devoid of merits and stands dismissed and consequently, A.S.SR.No.29731 of 2018 stands rejected.

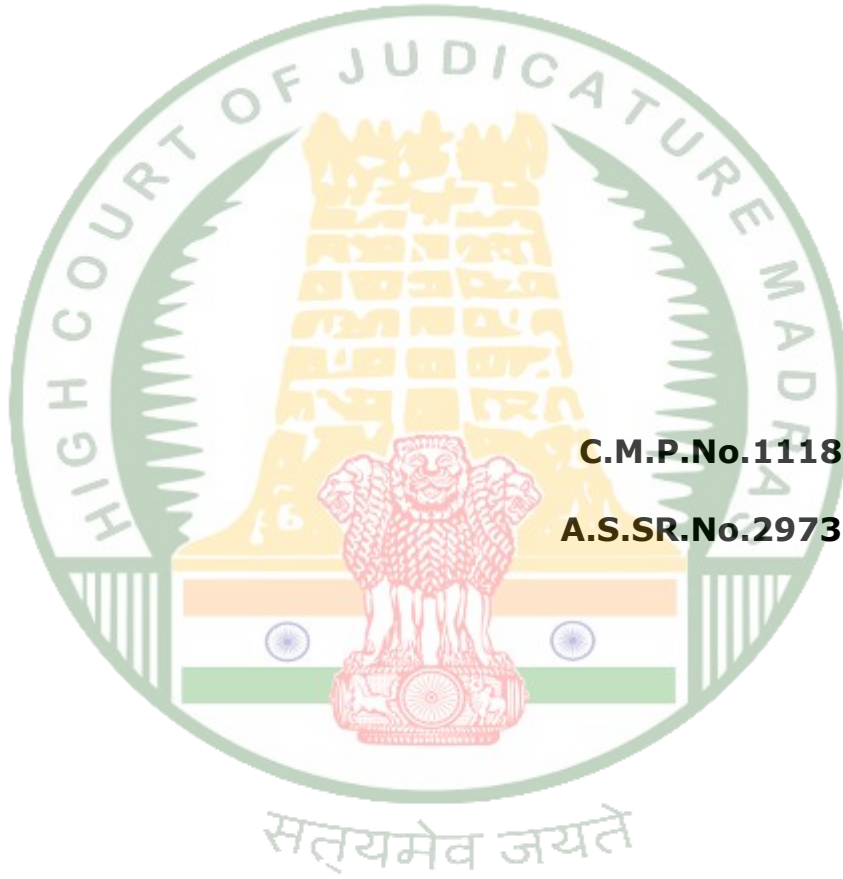
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S.M.SUBRAMANIAM, J.

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