



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (MD)Nos.1121 and 1122 of 2013

WEB COPY

1.Mahatma
2.Latha
3.Ramesh
4.Lekshmi
5.Jithi (minor)
6.Lisha (minor) .. Petitioner 1 and 3 to 7/Appellants
(P5 & 6 Minors Rep by P4) 1 and 3to7/Petitioners in both the CRPs

Vs.

Swami Asari .. Respondent /Respondent /
Respondent in both the CRPs

COMMON PRAYER: These Petitions are filed under Section 115 of Code of Civil Procedure, against the orders, dated 14.03.2013, passed in I.A.Nos.395 and 373 of 2006 in A.S.S.R.Nos.5128 and 5162 of 2006 on the file of the Subordinate Judge, Kuzhithurai, respectively.

For Petitioners in
C.R.Ps. : Mr.K.N.Thambi

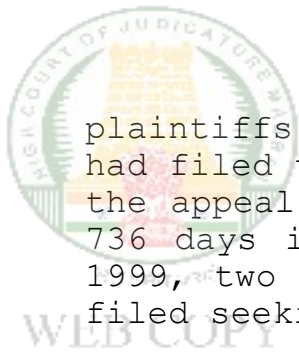
For Respondent in
C.R.Ps. : Mr.M.R.Sreenivasan

C O M M O N O R D E R

These two revisions have been filed by the proposed appellants, who filed two appeals challenging the common Judgment and decree made in O.S.No.30 of 1999, which was originally filed by Lekshmiammal, the mother of the parties seeking a declaration that the settlement deeds executed by her, in favour of the respondent herein, are null and void, for declaring the title of the plaintiff and for costs.

2.During the pendency of the said suit, the original plaintiff Lekshmiammal died and her other children were impleaded as plaintiffs 2 to 4. The defendant in O.S.No.30 of 1999 filed a suit in O.S.No.31 of 2004 seeking a declaration of his title and a consequential injunction restraining the mother viz., Lekshmiammal and one of the sons, from

interfering with his possession of the suit properties. Both the suits were tried together. While the suit in O.S.No.30 of 1999 was dismissed, the suit in O.S.No.31 of 2004 was decreed. Aggrieved, the



plaintiffs in O.S.No.30 of 1999 and defendants in O.S.No.31 of 2004 had filed two appeals. Since there was a delay of 583 days in filing the appeal against the judgment in O.S.No.31 of 2004 and a delay of 736 days in filing an appeal against the Judgment in O.S.No.30 of 1999, two applications in I.A.Nos.373 of 2006 and 395 of 2006 were filed seeking condonation of delay.

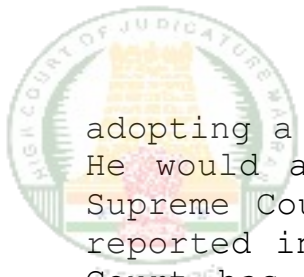
3.The affidavit, in support of these applications, was filed by the third appellant, who happens to be the daughter of the deceased Lekshmiammal. According to her, she was residing at Bangalore, where her husband was working. She was also incharge of filing of the appeals, since the first appellant was a heart patient and the second appellant had Asthmatic problems and therefore, she had undertaken the task of filing the appeals. She being the resident of Bangalore and her children are studying at Bangalore, she could not frequently visit Kuzhithurai to enable a counsel to file the appeals. It is also stated that she herself is having health issues and she was undergoing treatment for the same.

4.These applications were opposed by the respondent contending that the reasons are not sufficient to condone such long delay. It was also claimed that the so called illness of the other appellants is a brought up story just to cover up the laches on their part in filing the appeals. The learned Subordinate Judge, who heard the applications, found that the reasons assigned in the affidavit would not constitute sufficient cause for condonation of delay under Section 5 of the Limitation Act. He would also fault the appellants, for not producing any medical evidence in support of their claim of illness of first and second appellants, who were very much residing at Kuzhithurai.

5.The learned Subordinate Judge, applied a pedantic approach and concluded that each days delay has not been properly explained. On the said conclusion, the learned Subordinate Judge, dismissed the applications for condonation of delay. Aggrieved, the appellants have come up with these two revision petitions.

6.I have heard Mr.K.N.Thambi, learned counsel appearing for the petitioners and Mr.M.R.Sreenivasan, learned counsel appearing for the respondent.

7.Mr.K.N.Thambi, learned counsel appearing for the petitioners would vehemently contend that the appellate Court was not right in dismissing the applications for condonation of delay, more so, when the suits are of a very substantive nature seeking declaration of title and declaration as to the validity of certain documents. He would also invite my attention to the fact that the mother had died pending suit and the appellants were impleaded as her legal heirs in the suits. He would further point out that a plausible reason has been adduced for the delay and the appellate Court was not right in



adopting a very strict standards in matters of condonation of delay. He would also invite my attention to the decision of the Hon'ble Supreme Court in **UNIVERSITY OF DELHI v. UNION OF INDIA AND OTHERS**, reported in **2019 SCC Online (SC), 1634**, wherein the Hon'ble Supreme Court has held that the Court should adopt a liberal approach in matters in condonation of delay and had pointed out that the Courts are respected for their ability to do justice and not for legalizing injustice.

8.A perusal of the proceedings would show that both the suits are for substantive reliefs relating to title and succession to the properties of Lekshmiammal. Though Lekshmiammal had executed two settlement deeds in favour of her eldest son, the respondent herein, she had herself filed a suit seeking cancellation of the said documents on various grounds. Of course, the respondent has been able to succeed in one Court and the delay in filing appeals cannot be said to be very short. But at the same time, the reasons assigned must be looked into. Unless it is shown that there was a *mala fide* intention on the part of the appellants in delaying the filing of the appeals, I do not think that the learned Subordinate Judge, was right in dismissing the applications, applying a very strict standard for the meaning of the term "sufficient cause", found in Section 5 of the Limitation Act. The requirement that each and every days delay should be explained, should be liberally construed and if the over all reasons assigned are plausible and convincing, the Court cannot find fault with the appellants for not having given reasons for condonation of every day's delay.

9.Considering the nature of the proceedings before the trial Court, I find that the appellants should be given a change to contest the matter on merits before the appellate Court. However, they should also compensate the respondent for the delay caused by them.

10.In view of the above, these Civil Revision Petitions are allowed. The delay of 736 and 583 days in filing the appeals is condoned on condition the petitioners pay a sum of Rs.5,000/- in each Civil Revision Petition to the respondent on or before 13.03.2020, failing which, these Civil Revision Petitions will stand dismissed. The appellate Court is directed to number the appeals on production of proof of payment of cost and dispose of the same, as expeditiously as possible, at any rate, within a period of six months from the date of numbering of the appeal. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



C.R.P.(MD)Nos.1121 & 1122 of 2013 of 2013

Rj2

To மனோ ஹஸ்தே

WEB COPY

The Subordinate Judge, Kuzhithurai.

+2 CC to Mr.K.N.THAMBI, Advocate (SR-6520,6521[F] dated 14/02/2020)

+1 CC to Mr.R.NANDAKUMAR, Advocate (SR-6531[F] dated 14/02/2020)

C.R.P. (MD)Nos.1121 and 1122 of 2013

14.02.2020

VB(21.02.2020) 4P 5C