



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

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C.M.P. (MD)No.8707 of 2019

in

C.R.P. (MD)SR.No.64813 of 2019

Mani

.. Petitioner / Legal Heirs of Perumal

Vs.

Pandian (died)

1.Suruliammal

2.Dhanalakshmi

3.Ponnampalam

4.Subramanian

5.Minor Gunasekaran

5th respondent represented by 1st respondent

... Respondents/Petitioners/Decree Holders/
Plaintiffs

Perumal (died)

6.Thangavel

7.Velusamy

8.Veluthai

9.Palraj

10.Velmurugan ... Respondents / Legal Heirs of deceased Perumal

(Notice to 6 to 10 respondents is given up as
no relief is claimed against them.)

(Cause title accepted, vide Court order dated 18.09.2019,
made in C.M.P No.8498 of 2019)

PRAYER : Petition filed under Section 5 of the Limitation Act to condone the delay of 865 days in preferring the Civil Revision Petition in C.R.P.(MD)SR.No.64813 of 2019 against the Fair and Decreeal Order dated 16.09.2016 in E.A.No.25 of 2010 in E.P.No.46 of 1998 on the file of the District Munsif Court, Aundipatti.

For Petitioner

: Mr.B.Rajesh Saravanan

For Respondents 1 to 4

: Mr.A.Arumugam



ORDER

This petition is filed to condone the delay of 865 days in preferring the Civil Miscellaneous Appeal in CMA SR(MD)No.64813 of 2019.

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2.The predecessors of the respondents filed a suit against the predecessors of the petitioner in O.S.No.864 of 1990 for delivery of possession and damages for use and occupation of the suit property. The suit was decreed on 24.06.1993. Then the predecessors of the respondents filed an Execution Petition in E.P.No.46 of 1998. During the pendency of Execution Petition, the predecessors of Ponnusamy died and subsequently, the legal heirs of Ponnusamy has not taken steps to proceed with the Execution Petition. Therefore, the Execution petition was dismissed for default on 08.12.2005. Then they have filed a petition to restore the Execution Petition and also has filed a comprehensive petition, since Ponnusamy died, the delay in filing the restoration petition has to be condoned and Execution Petition has to be restored. The Execution Application in E.A.No.25 of 2010 was allowed on 16.09.2016. Subsequently, the petitioner issued a notice to the respondents and in the mean while, the petitioner predecessor one Perumal, the Judgment Debtor died and the legal heirs of Perumal impleaded in the Execution Petition. The Execution Petition was proceeded against the legal heirs of Perumal and subsequently, delivery was ordered. Now challenging the said order passed by the Execution Court, the petitioners have filed the present petition and one Civil Revision Petition is filed against the order of delivery and another Civil Revision Petition is filed against the order of restoration petition.

3.There is a delay of 865 days in filing the Civil Revision petition in CRP(MD) SR.No.64813 of 2019, challenging the order dated 16.09.2016, even though he has stated that he was not aware of the proceedings, he has participated in the delivery proceedings. Therefore, the petitioner knew about the restoration petition, which has already been allowed and the delay has been condoned and he has not challenged the same in time. So after participating in the Execution Proceedings and after effecting the delivery, he has filed the Civil Revision in unnumbered C.R.P. (MD)SR.No.64813 of 2019 to condone the delay of 865 days. Since the petitioner impleaded himself as a legal heir of Ponnusamy, after the death of Ponnusamy, the petitioner participated all along with the Execution Proceedings and now filed a petition challenging the order of restoration dated 16.09.2016 is not acceptable. Therefore, the reasons stated in the affidavit is not acceptable one and in order to protract the proceedings and in order to stall the delivery proceedings, he has filed the present petition and challenging the order dated 16.09.2016 with



inordinate delay of 835 days and there is no reason given for such inordinate delay and hence, the reasons stated in the affidavit is not satisfied. Therefore, this Court is not inclined to condone the delay. This petition is dismissed accordingly. Consequently, C.M.A. SR(MD)No.64813 of 2019 is rejected at the S.R. stage itself

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

The District Munsif,
Aundipatti.

+2cc to Mr.A.Arumugam, Advocate in SR.No.12486

C.M.P. (MD)No.8707 of 2019
in

C.R.P. (MD) SR.No.64813 of 2019
(1/1)

18.03.2020

rm

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