

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.01.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.P.No.14634 of 2020 in A.S. SR No.133875 of 2019

K.S.Krishnamurthy

... Petitioner

(cause title accepted vide order of Court dated
27.11.2020 made in C.M.P. No.12445 of
2020 in A.S. SR No.133875 of 2019)

-vs-

1.S.Usharani
S.Vanitha (died)
2.S.Manjula
3.Barath Prasanna Keerthi
4.K.N.Ganesh
5.N.Sundararajan
6.Jayalakshmi
7.J.Jawahar
8.J.Prabhu
9.Kavitha
10.A.A.Mohammed Anwar
11.P.Sundarasami
12.S.Sudarshan

... Respondents

Prayer in C.M.P.: Petition filed under Order 41 Rule 3A of C.P.C. to condone the delay of 409 days in preferring the above Appeal against the final decree dated 13.02.2018 passed in I.A. No.373 of 2006 in O.S. No.246 of 2003 on the file of the IV Additional District Judge, Coimbatore.

Prayer in A.S. SR: Petition filed under Section 96 of Code of Civil Procedure to set aside the final decree and the judgment dated 13.02.2018 rendered in I.A. No.373 of 2006 in O.S. No.246 of 2003 on the file of the IV Additional District and Sessions Judge, Coimbatore by allowing the appeal suit.

For petitioner : Ms.Elizabeth Ravi

ORDER

The petition has been filed to condone the delay of 409 days in preferring the above appeal against the final decree dated 13.02.2018 passed in I.A. No.373 of 2006 in O.S. No.246 of 2003 on the file of the IV Additional District Judge, Coimbatore.

2.Learned counsel appearing for the petitioner submitted that the petitioner is the first defendant before the Trial Court. When the suit filed by the plaintiffs for partition of the properties set out in Schedule 'A' into 12 equal shares by metes and bounds, the Trial Court has decreed the suit by its judgment and decree dated 29.09.2005. Thereafter, I.A. No.373 of 2006 was filed and the same was ordered on 13.02.2018. Aggrieved thereby, the petitioner has been advised to file an Appeal. However, there has been a delay of 409 days in preferring the appeal which is neither willful nor wanton only due to the bonafide reason. Learned counsel appearing for the petitioner further submitted that when certified copy of the Trial Court dated 29.09.2005 as well as the other copies were not made available, arrangements have been made for getting the same. After collecting all the papers, the appeal papers have been made ready for filing. In the meanwhile, the delay has occurred.

3.We are unable to find any sufficient cause to condone the delay. The reason being that when the partition suit in O.S. No.246 of 2003 was decreed on 29.09.2005 and I.A. No.373 of 2006 filed was allowed on 13.02.2018, it is not known why the petitioner first defendant has not immediately awaken to file the appeal against the judgment and decree dated 29.09.2005. As it is well settled law that every day's delay has to be explained and no such explanation has been given in the present case, which is bereft of any merit, finding no sufficient cause or justification whatsoever, the petition seeking an order to condone the huge and un-explained delay of 409 days is dismissed. Consequently, AS No.SR133875 of 2019 stands rejected.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vga

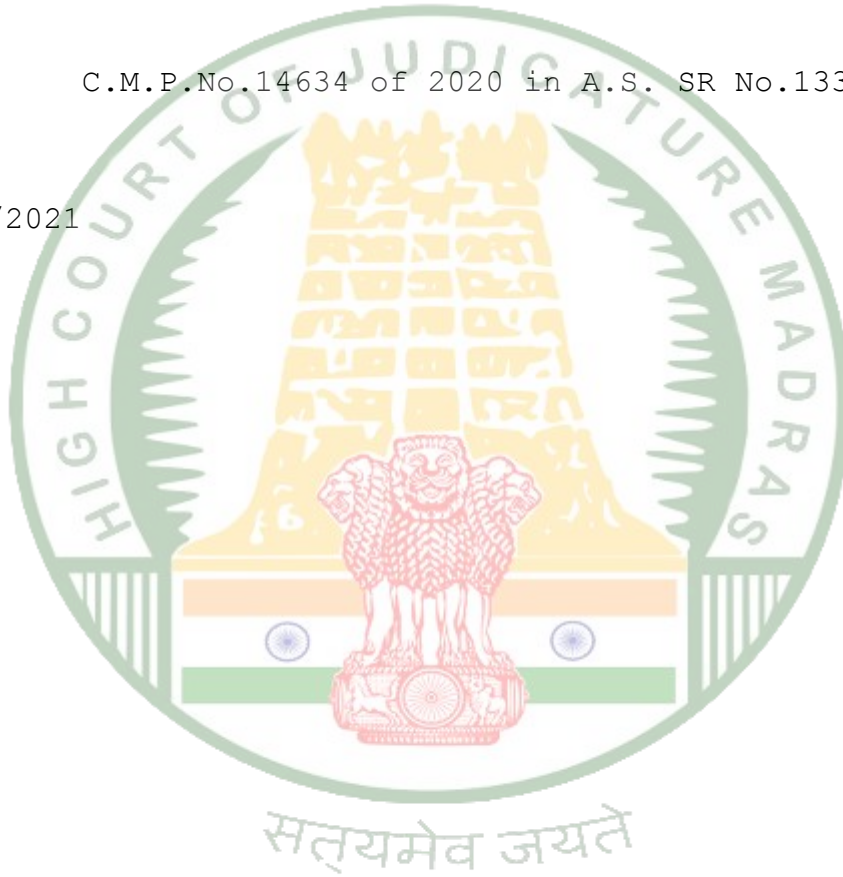
To

The IV Additional District Judge,
Coimbatore.

+lcc to M/s.Elizabeth Ravi, Advocate Sr.565

C.M.P.No.14634 of 2020 in A.S. SR No.133875 of 2019

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