

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 2ST DAY OF JANUARY 2021

THE HON'BLE MS.JUSTICE P.T.ASHA

A.No.9201 of 2019

in

C.S.No.254 of 1992

The Corporation of Madras
Represented by its Commissioner
Rippon Buildings,
Madras-600 003.

..Applicant/Plaintiff

-Versus-

1.The Indian Fine Arts Society
represented by its Hony.
Secretary
15,Stringers' Street,
Madras-600 108.

2.M/s.Associate Builders and
Developers
No.190, Anna Salai,
Madras-600 006.

..Respondents/Defendants

Application praying that this Hon'ble Court be pleased to condone the delay of 8773 days to restore the suit bearing C.S.No.254 of 1992 on the file of this Hon'ble Court.

This Application coming on this day before this court for hearing the court made the following order:

The above application is filed to condone the delay of 8773 days in filing the application to recall the judgment and decree dated 31.07.1995 in CS.No.254 of 1992 and consequently restore the suit to file.

2. The applicant/plaintiff would submit that the suit in question had been filed for declaring that the first respondent/first defendant cannot convey the schedule mentioned land to any other person other than the plaintiff and any sale conducted in favour of the second defendant was null and void and also for a mandatory injunction directing the first respondent to resell the property to the applicant and for an injunction restraining the first respondent from conveying or selling or registering the suit schedule property in favour of the second respondent.

3. The property in question is an extent of 3 grounds 641 Sq.ft. premises in Survey No. 39/1 (part) and 38/5 (part) of Mambalam Village in T.S.No.6212 Block No.9, Nana Rao Road, Mambalam Village 600017.

4. According to the applicant, the property was sold to the first respondent on condition that the first respondent would reconvey the

property to the applicant herein. In the event of their ceasing to function at the very same price at which the property was being conveyed by the applicant to the first respondent, the applicant had agreed to pay reasonable sum for any super structure that would be put up in the said property.

5. It is the case of the applicant that contrary to the conditions of sale, the first respondent had sold the property to the second respondent under a sale deed dated 30.10.1991 registered as Document No. 1634 of 1991 on the file of the Sub Registrar, T. Nagar. When the applicant had questioned the same, they came to know that the suit had been withdrawn as settled out of Court when no settlement whatsoever has taken place. In fact, the withdrawal of the suit has not been communicated to the office of the applicant. Therefore, the applicant has come forward with the present application and in that process, delay of 8773 days has crept in.

6. Counter has been filed by the second respondent herein inter alia denying all the allegations contained in the affidavit filed in support of the application. The second respondent would submit that even as per the terms of the Sale Deed dated 30.03.1948 executed by the applicant in favour of the first respondent there was no prohibition for the sale of the

of the property inviting prospective buyers. The second respondent in response to the above advertisement had submitted their bid. The property in question was the subject matter of the proceedings under the Urban Land Ceiling Act and ultimately by order dated 23.04.1993, the competent authority had held that the land was within the Ceiling Limit. At this juncture, a notice was served on the first and second respondents questioning the sale and the same was also replied to and thereafter there was no further action on the side of the applicant. The second respondent would submit that after the purchase, the revenue records have also been mutated in the name of the second respondent. The applicant had thereafter filed the instant suit on the file of this Court. The applicant thereafter agreed to withdraw the suit if the cost incurred by them for filing the suit was reimbursed by the respondent. Accordingly Demand Draft was given to the applicant under a covering letter dated 21.02.1995. Demand Draft dated 21.02.1995 has also been communicated by the applicant and the suit was withdrawn by the applicant by a judgment dated 31.07.1995. This Court had also directed to refund half of the Court fee in favour of the applicant's counsel. The Court fee has also been received by the counsel. After receiving the refund and nearly 14 years thereafter the present application has been moved. The respondent would submit that this is nothing but a abuse of process of Court and made with an intent to harass

the respondent.

7. Mr. S.R. Rajagopalan, Learned Additional Advocate General appearing on behalf of the applicant reiterated the contentions raised in the affidavit.

8. He would submit that the property in question is a valuable property and the applicant had not consented either for the settlement or for withdrawing the said suit. He would therefore submit that this Court should exercise its discretion to condone the delay. The said application is vehemently opposed by the respondents.

9. Heard the counsel and perused the records.

10. It is seen that the counsel who had appeared for the applicants had withdrawn the suit as settled out of Court on 31.07.1995. Thereafter the refund of Court fee has been received by the counsel who had represented the applicant on 02.07.1996. The applicant has not given any reasons for not following up the suit from the year 1996 till date of filing of this application. In fact in the affidavit filed in support of the application the

applicant would submit that they came to know about the decree only when

the Standing Counsel for Corporation had addressed the Senior Law Officer of the applicant Corporation through letter dated 21.06.2019. There is no explanation whatsoever for the silence on the part of the applicant for the period from 31.07.1995 till 19.11.2019 when this application has been filed.

The application lacks merits and is accordingly dismissed.

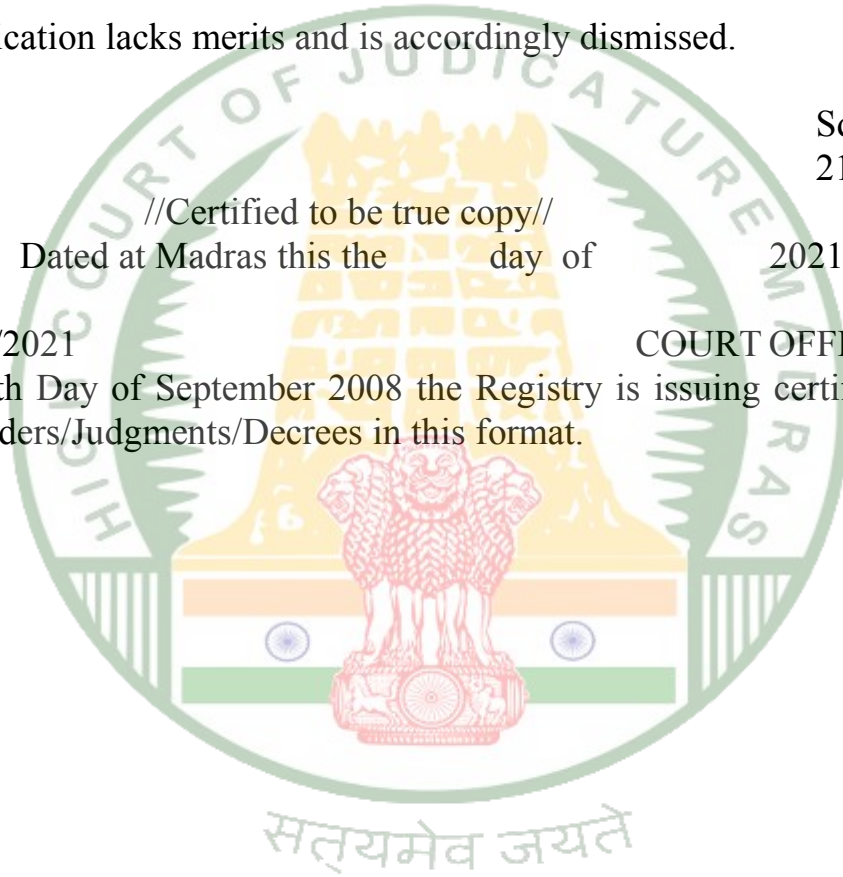
Sd/-P.T.A.J
21.01.2021

//Certified to be true copy//
Dated at Madras this the day of 2021.

JJ 18/02/2021

COURT OFFICER(O.S.)

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