



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.P. (MD)No.2085 of 2016 in
S.A. (MD)No.SR1494 of 2013

WEB COPY

C.M.P. (MD)No.2085 of 2016

1. R.Nagaraj
2. S.Ramar
3. O.Palanichamy ... Petitioners/Appellants
vs
1. S.Krishnasamy Naicker
2. S.Palanichamy
Ondiveeran (died)
3. Peatchiammal
4. O.Ramar
5. Vasantha ... Respondents/Respondents

Prayer: Petition filed under Order XII Rule 3A of Code of Civil Procedure, seeking to condone the delay of 367 days in filing the second appeal.

For Petitioners : Mr.N.Ranjith
For Respondents : Mr.Prahalad Ravi for R1

S.A. (MD)No.SR1494 of 2013

1. R.Nagaraj
2. S.Ramar
3. O.Palanichamy ... Appellants/1,3&6 Respondents/
1,3&6 Defendants
vs
1. S.Krishnasamy Naicker ...1st Respondent/Appellant/Plaintiff
2. S.Palanichamy
Ondiveeran (died)
3. Peatchiammal
4. O.Ramar
5. Vasantha ...2to5 Respondents/2,5,7&8 Respondents/
2,5,7&8 Respondents

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 30.10.2010 passed in A.S.No.72 of 2008 on the file of the Subordinate Court, Periyakulam, by reversing the Judgment and Decree dated 24.03.2008 passed in O.S.No.250 of 2000 on the file of the District Munsif Court, Periyakulam.

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For Appellants : Mr.N.Ranjith
For Respondents : Mr.Prahalad Ravi for R1

ORDER

This Civil Miscellaneous Petition has been filed seeking for condonation of delay of 367 days in filing the second appeal.

2. The decree challenged is a decree for permanent injunction and mandatory injunction. It is a joint and indivisible decree. Pending this petition, the 3rd respondent Peatchiammal, who is the wife of the 4th defendant in the suit was not served and there was a default in payment of batta for service of notice on her. Hence, this petition was dismissed as against her on 07.09.2017. Till date, no steps have been taken to have the petition restored as against the 3rd respondent. Therefore, the decree has become final insofar as the 3rd respondent is concerned. The decree being joint and indivisible decree, the second appeal cannot be continued, without this petition being restored as against the 3rd respondent.

3. The learned counsel for the petitioner would submit that the petitioners have not responded to his letters and therefore, he is unable to take steps to have this petition restored as against the 3rd respondent.

4. In view of the above said submission, this petition is dismissed, since no steps have been taken for restoration as against the 3rd respondent. Consequently, S.A.(MD)No.SR1494 of 2013 is also rejected.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

OGY

To

1. The Subordinate Judge, Periyakulam.
2. The District Munsif, Periyakulam.

+1 CC to Mr.B.PRAHALAD RAVI, Advocate (SR-8908[F] dated 04/03/2021)

Order made in
C.M.P. (MD)No.2085 of 2016 in
S.A. (MD)No.SR1494 of 2013
02.03.2021

ES (CO)

SRS (12/03/2021) 2P : 4C

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