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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.01.2022

PRONOUNCED ON : 15.03.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.P.NO.4438 OF 2020

IN

S.A.SR.NO.3424 OF 2020

A.Muthusamy

... Petitioner/Appellant

.Vs.

C.Soundaram (Deceased)

1. M.R.Rathindran

2. S.Raghuram

3. S.Neelaveni

4. Smt.Lalitha

... Respondents/Respondents

PRAYER:-

Civil Miscellaneous Petition is filed under Order 41 Rule 3 (a) of Code of Civil Procedure r/w. Order 42 Rule 1 of CPC, to condone the delay of 5158 days in filing the present second appeal in S.A.S.R.No.3424 of 2020.

PRAYER IN S.A.S.R.NO.3424 OF 2020:-

This Second Appeal sought to preferred against to set aside the Judgment and Decree passed in A.S.No.79 of 2004, dated 09/08/2005 on the file of the Principal Sub-Court at Coimbatore in confirming the Judgment and Decree made in O.S.No.2278 of 1993, dated 06/04/2004 on the file of the Principal District Munsif Court at Coimbatore.

For Petitioner : Mr.R.Jayaprakash

For Respondents : Mr.V.Ramesh
For M/s.T.Thiyagarajan
For R1

Mr.T.R.Rajaraman
For R2 and R3



ORDER

This petition is filed to condone the delay of 5158 days in filing the Second Appeal in S.A.SR.No.3424 of 2020.

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2. The learned counsel for the petitioner submitted that the petitioner filed the suit in O.S.No.2278 of 1993, on the file of the Principal District Munsif Court, Coimbatore for the relief of permanent injunction restraining the respondents from alienating the suit property and other reliefs. He filed another suit in O.S.No.49 of 1994 before the same Court for the relief of permanent injunction restraining the respondents from registering the suit property. Respondents filed O.S.No.2629 of 1996 seeking the relief of permanent injunction restraining the petitioner from trespassing into and dealing with suit property and for other reliefs. The suits filed by the petitioner were dismissed and suit filed by the respondent was decreed by a common judgment on 06.04.2004. Petitioner preferred appeals in A.S.No.79 of 2004 against the O.S.No.2278 of 1993, A.S.No.41 of 2004 against O.S.No.2629 of 1996, A.S.No.45 of 2004 against O.S.No.49 of 1994 on the file of the Principal Sub Court at Coimbatore. The First Appellate Court had mechanically confirmed the judgment dated 09.08.2005. Due to inadvertence and mistake, petitioner could not file Second Appeals against the other two first appeals and he filed Second Appeal in S.A.No.96 of 2008. This Second Appeal was dismissed on 20.09.2018 as barred by res judicata. Only after this judgment, he came to know that Second Appeal has to be filed against the suit even if he had not filed the original suit. First Appeal number has been wrongly mentioned as A.S.No.41 of 2004 instead of A.S.No.45 of 2004 and petitioner name was wrongly mentioned as first defendant instead of plaintiff in the decretal order in A.S.No.45 of 2004. Therefore, he filed application in I.A.No.1 of 2019 in A.S.No.45 of 2004 for amending the decree. It was allowed on 27.11.2019. Thereafter, he applied for copy application on 03.12.2019 and it was made ready on 19.12.2019. Immediately, this Second Appeal is filed. Thus, the delay of 5158 days in filing the Second Appeal has to be condoned.

3. Learned counsel for the respondents strongly opposed this petition and submitted that petitioner failed to explain the long delay of more than 5000 days in filing the Second Appeal as required by law. Reasons are not sufficient enough to condone the long delay. The main contention in S.A.No.96 of 2008 by the respondents is that appeal is not maintainable, since, the petitioner did not prefer Second Appeal against A.S.No.79 of 2004. Petitioner was well aware of the fact that, he did not



prefer Second Appeal against these appeals. The plea of res-judicata was raised in S.A.No.96 of 2008 by the respondent's counsel on several occasions. Petitioner has knowledge about the factum of non filing of Second Appeals against the judgments in A.S.No.79 of 2004 and A.S.No.45 of 2004. Petitioner is not prudent enough to file Second Appeal in time. Therefore, the long delay in filing the Second Appeal cannot be condoned. This petition is filed only to drag on the proceedings and liable to be dismissed.

4. Considered rival submissions and perused the records.

5. As narrated above, first appeals in A.S.No.79 of 2004, A.S.No.41 of 2004 and A.S.No.45 of 2004 were disposed by common judgment on 09.08.2005. However, it appears that the petitioner filed only the Second Appeal in S.A.No.96 of 2008 against the judgment in A.S.No.41 of 2004 alone and failed to file Second Appeal against the judgment in A.S.No.79 of 2004 and A.S.No.45 of 2004. It is clearly brought out in the counter filed by the respondent that during the hearing in S.A.No.96 of 2008, it was brought to the notice that petitioner had not preferred appeal against the judgments in A.S.No.79 of 2004, A.S.No.45 of 2004. A plea was also taken that S.A.No.96 of 2008 is barred by res-judicata. S.A.No.96 of 2008 was dismissed on 20.09.2018. Even, thereafter, Second Appeal against the judgments in other two First Appeals in A.S.No.79 of 2004, A.S.No.45 of 2004 have not been filed immediately. The submission of the learned counsel for the petitioner that there is some mistake in referring appeal number and rank of the petitioner in the decreetal order in A.S.No.45 of 2004 and that contributed to the delay cannot be accepted, mainly for the reason that judgment in these appeals were delivered as early as on 09.08.2005. Petitioner has not given any valid and satisfactory reasons for condoning the huge delay of 5158 days in filing the Second Appeal. The reasons stated for the delay cannot be legally sustained and therefore, petition in C.M.P.No.4438 of 2020 in S.A.Sr.No.3424 of 2020 is dismissed. No costs. Consequently, S.A.Sr.No.3424 of 2020 is rejected.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,
Coimbatore.

2. The Principal District Munsif,
Coimbatore.

C.M.P.NO.4438 OF 2020 IN
S.A.SR.NO.3424 OF 2020

SSD(CO)
PBS/05/04/2022