

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CMP.No.19143/2021 in SA.SR.No.10122/2021 & SA.SR.No.10122/2021

Masilamani

.. Petitioner/Appellant

Vs.

Chinna Munusamy Naidu (Late)

Subramani (Late)

1.Egambaram

2.Amirthammal

3.Amul @ Uma Maheswari

4.Mohan

5.Kumudha

6.Deepa

7.Rajammal

.. Respondents/Respondents

Prayer in CMP.No.19143/2021:- Petition filed under Order 41 Rule 3A of CPC r/w under Order 42 Rule 1 of CPC to condone the delay of 1724 days in filing the above Second appeal.

Prayer in SA.SR.No.10122/2021:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree 08.01.2015 made in AS.No.9/2012 on the file of the learned Subordinate Judge, Tiruvallur confirming the judgment and decree dated 28.02.2012 made in O.S.No.27/2008 (O.S.No.275/1994, Tiruvallur District Munsif Court) on the file of the learned District Munsif cum Judicial Magistrate, Uthukottai.

For Petitioner /
Appellant

: Mr.V.Elangovan

For R1

: Mr.M.L.Ramesh

ORDER/JUDGMENT

This petition is filed to condone the delay of 1742 days in filing the Second Appeal.

2. In the affidavit filed in support of the petition the following facts are set out. It is stated that the petitioner filed the suit in O.S.No.275/1994 before the District Munsif cum Judicial Magistrate, Uthukottai which was later transferred to the District Munsif Court, Tiruvallur as O.S.No.27/2008.

3. The suit is for specific performance of an agreement of Sale dated 03.07.1992 and for consequential reliefs. The suit was dismissed by the Trial Court holding that the plaintiff/petitioner has not proved the execution of Sale Agreement. Aggrieved by the judgment and decree of the Trial Court the appellant preferred an appeal dated 08.05.2015 made in A.S.No.9/2012 on the file of the learned Subordinate Judge, Tiruvallur. Aggrieved by the judgment of the Lower Appellate Court in confirming the Trial Court, the petitioner has filed the Second Appeal with inordinate delay of 1742 days nearly 5 years.

4. Though notice sent to respondents 2, 4 and 7 were returned with an endorsement "Deceased", and notice sent to respondents 3 and 6 were returned with an endorsement "No such person" and notice sent to 5th respondent is returned with an endorsement "Refused", notice is served on the 1st respondent on 06.12.2021 and the learned counsel for the 1st respondent is seriously contesting the petition.

5. From the affidavit, this Court is unable to see any plausible reason except stating that there was a delay in getting the copy of judgment and decree. The petitioner has also stated about the financial situation due to which the petitioner was forced to stay away from pursuing the appeal. None of the reasons can be considered by this Court. When it is admitted that the suit for specific performance filed by the appellant was instituted in the year 1992, this Court finds that the petitioner has dragged the respondents in Court for 30 years successfully.

6. Learned counsel appearing for the 1st respondent stated that the Courts below have found that the suit agreement is a forged document. Though this Court is not inclined to go into the merits of the submission, it can visualise the prejudice that will be caused to the respondents in a suit for specific performance on account of inordinate delay. Since, the delay is not properly explained, this Court is of the view that no discretion can be exercised in favour of the petitioner, unless the delay is explained. It is admitted that the First Appeal was dismissed on 08.01.2015 copy application was filed on 08.11.2019. It is only stated that the petitioner's movement was crippled. This cannot be accepted without verifiable

particulars. In the peculiar circumstances of the case, this Court finds that the petition is devoid of merits and is liable to be dismissed.

7. Accordingly, the Civil Miscellaneous Petition is dismissed. Consequently, the Second Appeal is rejected at the SR Stage.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

cda

To

1.The Subordinate Judge, Tiruvallur.

2.The District Munsif, Tiruvallur.

+1cc to Mr.M.L.Ramesh, Advocate SR.No.27257

+1cc to Mr.S.Doraisamy, Advocate SR.No.28200

CMP.No.19143/2021 in
SA.SR.No.10122/2021

EV(CO)
GMY(05/05/2022)