



C.M.P.No.5549 of 2022
in
C.M.A.SR.No.29367 of 2022

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P.T. ASHA, J.,

An obstructor has filed the above application seeking to condone the delay of 841 days in filing the appeal in C.M.A.SR.No.29367 of 2022.

2.The brief facts which preceeds the filing of the above appeal are as follows :

(i) The first respondent herein had filed a suit in O.S.No.99 of 2014 on the file of the learned District Munsif, Rasipuram against the respondents 2 to 5 herein for a direction to the defendants, namely respondents 2 to 5 herein to reinstate the plaintiff into possession of the suit property apart from claiming the ancillary rights.

(ii) The first respondent had based his claim to the suit property on an allotment order dated 15.05.1999 issued by the second respondent. Based on the allotment letter, the first respondent has also obtained loan for putting up construction by mortgaging the suit property to the Rasipuram Taluk Cooperative Housing Welfare Society, dated 27.05.1999.

(iii) It was the case of the first respondent that since his wife was not

<https://www.mhc.in.gov.in/judis>
<https://www.mhc.in.gov.in/judis> keeping good health, he had gone to Rasipuram on 03.05.2010. At that point of



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time, the second and third respondents herein without any prior notice had submitted a note that the first respondent was not residing in the suit property and they had removed the first respondent articles in the house and sealed the premises. The first respondent had also petitioned the third respondent on several occasions to put him back in possession. However, his requests had fallen on deaf ears.

(iv) It is also the case of the first respondent that in order to learn the true details regarding the allotment of the house, the first respondent had sent a RTI query to the third respondent dated 14.09.2013. To this query, a reply was received on 18.12.2013 stating that the patta which was granted to the first respondent had not been cancelled and that it had not been reallocated to any other person. This was the cause of action on which the suit was filed by the first respondent. The suit was decreed by a decree and judgment dated 06.06.2015. Against the said judgment, there was no appeal and therefore, the same had attained finality.

(v) Thereafter, the first respondent had filed REP.No.28 of 2015 on the file of the District Munsif, Rasipuram for the direction to hand over the possession of the suit property to the plaintiff/first respondent. The delivery was ordered on 06.02.2016. When the bailiff had attempted to execute the warrant by delivering

<https://www.mhc.to.gov.in/judis>
<https://www.mhc.to.gov.in/judis> possession, the appellant herein obstructed the same stating that she is in



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occupation of the suit property along with her husband Raju and that she is in possession of the same on the orders of the fourth defendant. The first respondent had therefore filed REA.No.1 of 2019 for orders of 'break open'. The appellant herein had filed a counter stating that she is in possession of the said property for over seven years. The learned District Munsif by orders dated 21.08.2019 had ordered break open. As against which, the appeal has been filed.

(vi) It is also seen that the appellant has filed a suit in O.S.No.122 of 2017 on the file of the District Munsif, Rasipuram against the respondents herein seeking to declare the judgment and decree in O.S.No.99 of 2014 dated 06.06.2015 as null and void and for a consequential injunction.

3.In the affidavit filed in support of the delay condonation application, the appellant would state that the delay was on account of the fact that the disturbance caused by the decree-holder/first respondent had resulted in a family dispute, which had left her totally disturbed and thereafter, the pandemic has set in. As a result of which, she was not able to contact her counsel. On account of this, the delay had occurred. The second respondent has filed a counter denying the allegations contained in the affidavit filed in support of the condone delay petition and also stating that Maheshwari has no right to the suit property and that without

<https://www.mhc.to.gov.in/judis>
<https://www.mhc.to.gov.in/judis> any orders allotting the suit property to her, the appellant had entered possession



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of the property bearing Plot No.75/SF, 176/1B. The second respondent had reiterated that the first respondent herein is the owner of the plot No.75 as per records.

4.It is also submitted by the learned counsel for the appellant that the appellant has been in possession of the suit property for a considerable period of time and therefore, the appellant is entitled to continue to be in possession and the dismissal of the obstruction petition is without basis. Since there was a specific defense taken that there was an allotment in favour of the appellant by the Board, this Court called upon the Government Pleader to bring the files relating to the allotment. A perusal of the files would indicate that the allotment in favour of the first respondent had taken place as early as in the year 1999. On 27.05.1999, Selvaraj/first respondent has also mortgaged the suit property with the Rasipuram Taluk Cooperative Housing Welfare Society for obtaining loan for putting up construction. On 15.07.2010, there is a communication dated 15.07.2010 in கு.கோ.எண்.டி1/15132/10, in which, the Collector has directed that Door No.75 to be handed over back to the first respondent and to allot Door No.27 to Raja, the husband of the appellant herein. Since the possession had not been handed over to the first respondent, he has filed the suit in question and obtained a decree in his



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which, orders of break open has been ordered. The plaintiff has also filed a suit in O.S.No.122 of 2017 and the same is pending. The first respondent who has obtained a decree as early as in the year 2015 is yet to enjoy the fruits of the same. The appellant who has no right over the suit property has successfully prevented the decree holder from taking possession of the property. The delay has not been properly explained and the reasons given in the affidavit filed in support of the condone delay petition is rather vague and inadequate.

5.Considering the above, the Civil Miscellaneous Petition is dismissed.

18.07.2022

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