



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Monday, the Fourteenth day of March Two Thousand Twenty Two

PRESENT

THE HON`BLE MR.JUSTICE S.S.SUNDAR

CMP.No.26976 of 2019

in SA.SR.No.144129 of 2019

1 S.BALAKRISHNNAN [PETITIONERS]

2 S.MANOCHARAN

Vs

1 SMT.SHANMUGAVADIVU [RESPONDENTS]

2 VIJAYAKUMAR

3 SMT.SUMATHI

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased To condone the delay of 2503 days caused in filling the second appeal against the Judgment and decree dated 21.09.2011, passed in AS.No.79 of 2010 by the Learned Fast Track Judge I, Coimbatore (in CMP.No.26976 of 2019).

Order : This petition coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.R.MANICKAVEL, Advocate for the petitioners and of MR.V.ELANGOVAN, Advocate for the Respondents, the court made the following order:-

- (1) The present miscellaneous petition is filed to condone the delay of 2503 days in filing the Second Appeal as against the judgment and decree dated 21.09.2011 made in As.No.79/2010 on the file of the learned Judge, Fast Track Court-1, Coimbatore.
- (2) The petitioners are defendants 1 and 2 in the suit for partition. As against the judgment and decree of the Lower Appellate Court confirming the judgment and decree of the Trial Court made in OS.No.195/2006 on the file of the learned Principal Subordinate Judge, Coimbatore, declaring the plaintiffs share, the present Second Appeal is filed.



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- (3) The reasons stated in the affidavit filed in support of the above miscellaneous petition is that there was a compromise talks and that the dispute was mutually compromised and that the parties had orally agreed that they would not litigate the matter further. Since there had been allotment of property in favour of the plaintiffs, it was contended by the learned counsel for the petitioners that the delay of nearly eight years is only on account of the compromise.
- (4) It was further stated that the respondents/plaintiffs had not filed the final decree application for more than eight years and therefore, the compromise was accepted by the respondents / plaintiffs. It is also stated that at the instance of the 1st plaintiff/1st petitioner, who is the second wife of one of the brothers, the valid compromise, after the disposal of the suit, has not been fructified.
- (5) The contesting respondents filed a counter affidavit to the present miscellaneous petition.
- (6) A copy of the counter has been produced before this Court.
- (7) In the counter affidavit, the specific averments in the petition that the compromise talks and the valid compromise is not refuted. It is the fact that no final decree application has been filed for a period of more than six years. This would probablise the case of the petitioners that there was some compromise talks.
- (8) The question whether there was actually a compromise with the consensus of all parties, cannot be decided in this miscellaneous petition. However, the petitioners have given probable cause for the inordinate and long delay in filing the second appeal.
- (9) The learned counsel for the petitioners would submit that there is no dispute with regard to entitlement as each one of the parties to the partition suit, are in enjoyment of a specific portion with the row of buildings.
- (10) Having regard to the facts narrated by the learned counsel for the petitioners as borne out from the records, this Court is of the view that the petitioners' explanation for the inordinate delay, cannot be ignored.
- (11) Since parties are close relatives and the contention of the petitioners regarding compromise talks and valid compromise are probable, this Court is of the view that the present miscellaneous petition can be allowed on terms.



(12) Hence, the Civil Miscellaneous Petition is **ordered** and the delay of 2503 days in filing the Second Appeal is **condoned on condition that the petitioners shall jointly pay a sum of Rs.10,000/- [Rupees Ten thousand only]** to the respondents/plaintiffs within a period of **two weeks from the date of receipt of a copy of this order.**

-sd/-

14/03/2022

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Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE I JUDGE,
FAST TRACK COURT, COIMBATORE.

2 THE PRINCIPAL SUBORDINATE JUDGE,
COIMBATORE.

Order

in
CMP.No.26976 of 2019

in SA.SR.No.144129 of 2019

Date :14/03/2022

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