



WEB COPY

C.M.P.(MD)No.5029 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.01.2022

PRONOUNCED ON : 25.01.2022

CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

C.M.P.(MD)No.5029 of 2021 in

REV.A.(MD)No.SR1813 of 2021

in

S.A.No.2055 of 2002

and

REV.A.(MD)No.SR1813 of 2021

Muthulakshmi

... Petitioner in both cases
vs.

1.Thenammal

2.Pachayee

3.Kathiresan Pillai

... Respondents in both cases

PRAYER: Petition filed under Section 5 of the Limitation Act to condone the delay of 320 days in filing the Review Petition against judgment and decree in S.A.No.2055 of 2002, dated 25.10.2018 passed by this Court.

PRAYER: Review Application filed under Section 47 Rule 1 CPC to set aside the judgment, dated 25.10.2018 made in S.A.No.2055 of 2002 on the file of this Court.

For Petitioner :Mr.S.Sankar
For R1 :Mr.T.Vadivelan
R2 and R3 :Dispensed with
(in both cases)

O R D E R

Petition filed under section 5 of the Limitation Act, 1963, by the 2nd respondent in S.A. No. 2055 of 2002 to condone the delay of 320 days in filing Review Petition against the judgment and decree dated 25.10.2018 in S.A. No. 2055 of 2002.

2.In the affidavit filed in support of the petition, the petitioner, Muthulakshmi claimed that a copy of the judgment and decree dated 25.10.2018 in S.A. No. 2055 of 2002 was furnished by her advocate only in the month of February 2020. She further stated that owing to the Covid 19 pandemic situation, she was not able to file the Review Petition. She further stated that taking advantage of the judgment, the respondents are taking steps to alienate the suit schedule property. She claimed that she has a prima facie case. She therefore sought condonation of the delay of 320 days in filing Review Petition.

3.A memo was filed by the Counsel for the petitioner seeking to dispense with service of notice to the 2nd and 3rd respondents. It was stated that the 2nd respondent was the mother of the petitioner and the 3rd respondent had not participated in the judicial proceedings when the Second Appeal was heard.

<https://hcservices.ecourts.gov.in/hcservices/> 4.A Counter was filed by the 1st respondent/appellant in the



Second Appeal. It was stated that the petitioner herein had contested the litigation from the trial stage till the Second Appeal stage. It was further stated that the 2nd respondent had executed a registered settlement deed on 31.12.2020 with respect to the entire suit property in favour of the petitioner herein, in violation of the judgment in the Second Appeal. It was further stated that the petitioner herein, in turn had executed a deed of deposit of title in favour of M/s. Aptus Value Housing Finance India Ltd., by a registered document No. 1130 of 2021 dated 07.07.2021. It was claimed that the petitioner lacked bonafide and had dealt with the property, though under the judgment in the Second Appeal, a portion had been allotted to this answering respondent. It was urged that the reason given to condone the delay have to be rejected and the petition has to be dismissed.

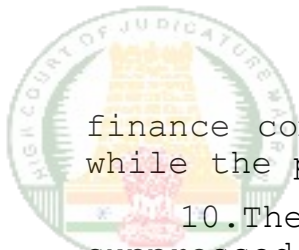
5. Heard Mr.S.Sankar, learned Counsel for the petitioner and Mr. T.V. Vadivelan, learned Counsel for the 1st respondent. As stated, learned counsel for the petitioner had filed a memo seeking to dispense with notice to the 2nd and 3rd respondents.

6.S.A. No. 2055 of 2002 had been filed by the 1st respondent herein. She had instituted O.S. No. 318 of 1998 before the Principal District Munsif Court, Tuticorin, seeking a judgment and decree of declaration of title and permanent injunction restraining the defendants from interfering with peaceful possession of the suit property measuring 0.05.0 hectares in Door No. 3/94, S. No. 9/4, Panchalagkurichi Village, Cyclone Colony, Ottapidaram Taluk, Tuticorin District.

7.The suit was decreed by judgment and decree dated 28.06.2001. This judgment was reversed by the Sub Court, Tuticorin in A.S. No. 39 of 2001, by judgment dated 01.07.2002. The 1st respondent/plaintiff then filed S.A. No. 2055 of 2002, originally before the Principal Bench of Madras High Court, and later after constitution of the Madurai Bench, the second appeal was transferred. The second appeal was argued on 24.09.2018 and judgment was pronounced on 25.10.2018, answering the substantial questions of law in favour of the appellant and allowing the second appeal.

8.A perusal of the records reveal that the petitioner herein had filed copy application only on 24.01.2020 after more than 1 year and 2 months. Both judgment and decree were made ready and delivered on the same date. This obviously meant that the decree had been drafted much earlier.

9.The delay of more than 1 year and 2 months in filing the copy application had not been explained. It had not even been mentioned. It is seen that thereafter, in the teeth of the judgment in the second appeal, the entire suit property had been dealt by the 2nd respondent herein, who had executed a settlement deed on 31.12.2020 in favour of the petitioner herein. The petitioner had then executed a deed of deposit of title deeds on 07.07.2021 with a third party,



finance company, M/s. Aptus Value Housing Finance India Ltd., even while the present petition was pending before this Court.

10.The fact that the property had been so dealt with had been suppressed by the petitioner. It is obvious that the petitioner is taking advantage of the extension of period of limitation owing to Covid 19 pandemic for nefarious purpose. There has been a delay of more than 1 year and 2 months in filing copy application. That delay has not been explained. The petition had been filed nearly after 1 year after receiving the copy of the judgment and decree and after the property had been settled in favour of the petitioner herein. The limitation period has been extended with the noble object to ensure that genuine litigants are not put to sufferance. But here is a case, where, after committing violation of the judgment in the second appeal, an attempt is made to take undue advantage of that extension of the limitation period. It can be extended in genuine cases, but not when fraud is perpetrated.

11.The extension of the period of limitation was from March 2020. The petitioner had applied for a copy of the judgment and decree dated 25.10.2018 only on 24.01.2020, and had received the same on the same date. That delay had not been explained. The fact that the property had already been dealt with had been suppressed. The fact that pending this petition, the property had been further dealt with, creating third party interests to the disadvantage of the 1st respondent, had not been disclosed to the Court. The petitioner has not come to Court with clean hands. The petition has to suffer an order of dismissal.

12.Accordingly, the petition is dismissed. Consequently, Review Application is rejected at SR stage itself. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Cmr

+1 CC to M/s.S.RAMSUNDARVIJAYRAJ, Advocate (SR-2984[F] dated 28/01/2022)

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