



CMP (MD) .No.3899 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 26.07.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.M.P.(MD).No.3899 of 2021 in
Rev.Aplc(MD).SR.No.4792 of 2021

Soundarammal (Died)

1.P.Karunambal

2.P.Soundarapandian

3.P.Ganam

4.P.Ganesan

Suppammal (Died)

Saradammbal (Died)

5.Shanmugam

6.Jeyalakshmi

7.Ravichandran

8.Krishnaveni

Sornavalli (Died)

9.Jeyaraman

10.Rajalakshmi

...Petitioners

*[Cause title amendment accepted vide Court order
dated 18.03.2021 in CMP(MD).No.1696/21 by CVKJ]*



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Vs.

1.KaruChelliah Konar (Died)

2.Pathinettampadi

3.Vansanthi

4.Parthasarathy

5.Veni

6.Kumar

7.Dhanalakshmi

8.Sampath

9.Chinnakutti

10.Muniyandi

11.Lakshmi

12.Minor Rajendran

13.Minor Sokkar

14.Minor Jayanthi

15.Akilandum

16.Maari

17.Rajendran

18.Balamurugan

19.Pandiammal



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20.Karuppiah

21.Saraswathi

22.Chandrasekaran

23.Alagar

24.Jeyaraman

25.Indhurani

26.Chandra

*[Respondents 15 to 26 are brought on record as
LRs of deceased 1st respondent vide order dated
21.04.2022 in CMP(MD).No.1297/22 by CVKJ]*

... Respondents

The Civil Miscellaneous Petition filed under Section 5 of Limitation Act, to condone the delay of 823 days in filing the above review petition against the Judgment and decree of this Court made in S.A.No.1353 of 2000 dated 27.09.2018.

For Appellant : Mr.S.I.Muthiah

For Respondent : Mr.V.S.Rishikesh (for R.15 to R.22)

ORDER

(Heard through Video Conference)

This petition has been filed to condone the delay of 823 days in filing review to the judgment in S.A.No.1353 of 2000 which Second Appeal was dismissed on 27.09.2018.



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2. In the petition filed seeking to condone the delay, it had been stated that first appellant died on 07.02.2004, second appellant died on 27.02.2012, the third appellant died on 01.10.2014 and the fourth appellant died on 29.01.2008. Now the legal representatives have filed the present application. It had been stated that the first respondent / defendant was trying to alienate the suit properties and at that point of time, they came to know that the appeal has been dismissed and they have filed the present application and there has been a delay in filing review and now the delay is sought to be condoned.

3. A counter has been filed on behalf of the respondents who again contended that the four appellants had died and nothing survives to adjudicate effectively and the appeal should be dismissed as abated. It is therefore contended by the learned counsel that quite apart from the reasons given to condone the delay in filing the application to review the judgment in the Second Appeal, there is a delay of 6586 days to set aside the abatement caused due to the death of first appellant, 3644 days delay to set aside the abatement caused due to the death of second appellant, 2697 days delay to set aside the abatement caused due to the death of third appellant and 5192 days



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delay to set aside the abatement caused due to the death of fourth appellant. Quite apart from this delay, there is delay of 836 days in filing the review application.

4. It is seen that the plaintiffs were the appellants before this Court. The suit has been filed for mandatory injunction and for declaration of title and alternate relief sought to uphold the title of adverse possession. It is contended by the learned counsel for the appellant that a settlement patta has been granted and that has been misconstrued by the Appellate Court against the appellants herein.

5. An issue of fact cannot be re-agitated in the Second appeal. Condoning the delay, no effective advantage would accrue to any one of the parties. Irrespective of the above, the reasons stated to condone the delay, is not convincing. The legal representatives who knew that the first appellant had died as early as in the year 2004 itself, should have taken necessary steps to step into the shoes of the first appellant. They have not explained why they have not done so.



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6. I do not find any convincing reason to condone the delay. The Civil Miscellaneous Petition stands dismissed.

7. In view of the fact that as on date, the legal heirs hold that a title is vested in them, if at all, they are able to find a way to establish that claim of title, then, if any legal proceeding instituted by them is lawfully valid, they may file necessary proceedings in that regard to protect their rights, if any.

8. The observations made in the Second appeal, may not hold good owing to the fact that even on that particular date, the appeal had stood abated against the appellant.

9. With the above observations, the Civil Miscellaneous Petition stands dismissed. Accordingly the Review stands rejected at the SR stage. No costs.

26.07.2022

Index:Yes/No
Internet:Yes/No
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