



CMP(MD)No.1952 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2022

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C O R A M

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CMP(MD)No.1952 of 2019
in SA(MD)SR.No.3183 of 2008

1.A.Pandian

2.A.Rasu

3.A.Palani Chamy

4.A.Thanga Durai

5.A.Parama Rasu

... Petitioners / Appellants

Vs.

1.S.Bashir

2.S.Jainalabudeen

3.N.Kani

S.Kadhar Mohammed (died)

4.K.Noor Jahan Beevi

K.Kabeer (died)

5.K.Rabeeq

6.K.Naseem

7.K.Manisha

S.Abbas Ali @ Kadhar Mohammed (died)

Saaraal Beevi (died)



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8.Sheik Moideen

9.Basheer

10.Shajahan

11.K.Rabia Begum

12.K.Nasiya Banu

13.K.Shajitha Begum

14.K.Jenith ... Respondents / Respondents

Prayer: This Civil Miscellaneous Petition is filed under Section 5 of the Limitation Act, to condone the delay of 869 days in filing the restoration petition.

For Petitioners: Mr.R.Suriyanarayanan
For Respondents: Mr.George Raja for
M/s.Ajmal Associates

ORDER

This civil miscellaneous petition has been filed to condone the delay of 869 in filing the restoration petition to restore SA(MD)SRNo.3183 of 2008.

2.The learned Counsel for the petitioners submits that the petitioners / plaintiffs have filed the above SA(MD)SRNo.3123 of 2008 as against the concurrent findings. The petitioners/ plaintiffs have filed the suit



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in OS.No.175 of 1997 before the learned District Munsif, Uthamapalayam for the relief of declaration and permanent injunction with regard to the suit schedule property. The suit was dismissed on 11.09.1998. The petitioners have preferred an appeal before the learned Sub Judge, Uthamapalayam in AS.No.33 of 2005 and the same was also dismissed by the first appellate Court on 28.03.2006. Aggrieved over the same, the petitioners have filed SA(MD)SR.No.3183 of 2008 on 28.01.2008 along with delay condonation petition in MP(MD)No.1 of 2008 to condone the delay of three days in filing the second appeal, based on the printed copy of the judgment, which was made ready on 22.01.2008. Notice was ordered. The petitioners have failed to pay batta in respect of respondents 1 to 4 and therefore, the SA(MD)SRNo.3183 was dismissed by the Joint Registrar of this Court on 15.11.2016. Thereafter, the present miscellaneous petition is filed to restore SA(MD)SR.No.3183 of 2018 with a delay of 869 days that the petitioners' counsel has failed to follow up the case and it was detected only after obtaining information under the Right to Information Act. Therefore, the delay has occurred.



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3. Heard the learned Counsel on either side and perused the materials placed on record.

4. The petitioners/ plaintiffs have filed the above suit for declaration and permanent injunction with regard to the suit schedule property. The respondents grandfather has already filed a suit for declaration and for recovery of possession as against the present plaintiffs' father in OS.No.57 of 1957 and the suit was decreed in favour of the respondents' grandfather on 09.09.1958. Thereafter, the decree holder in OS.No.57 of 1957 filed a petition for execution and delivery was also ordered. However, the petitioners claim that the delivery was not effected. Thereafter, the petitioners have filed the present suit in OS.No.175 of 1996 that they purchased the suit property through document Ex.A1 in the year 1947 and they are in continuous possession of the property. However, document Ex.A1 was not accepted by the trial Court in the earlier suit filed by the respondents' grandfather in OS.No.57 of 1957 and therefore, they are in continuous possession of the suit schedule property and by way of adverse possession they are entitled for declaration. The suit was negatived and the first appeal



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filed by petitioners was also dismissed. This present suit is filed in the year 1996 and it was dismissed by its judgment and decree dated 11.09.1998. Thereafter, the first appeal was presented only in the year 2005 with a delay of 7 years. However, the first appellate Court condoned the delay, entertained the first appeal and has dismissed it by judgment and decree dated 28.03.2006. Thereafter the present second appeal is filed in the year 2008 in the strength of the printed judgment copy, which was made ready on 22.01.2008. Even in the application to condone the delay, the petitioners have not paid batta and allowed the second appeal to be rejected. However, the petitioners have come forward with the present application to restore the appeal with the reason that only after obtaining information under RTI Act, they came to know about the status of the appeal and therefore the delay has occurred in filing the restoration application. This reason of petitioners for the delay of 869 days in filing the restoration petition is not acceptable. And also considering the conduct of the petitioners in filing the first appeal with a delay of 7 years and thereafter, filing the second appeal with delay and failing to pay batta, this Court is not inclined to entertain this



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application. Accordingly, this civil miscellaneous petition is dismissed. Consequently, the second appeal, which is in SR stage, stands rejected. No costs.

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