



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
CIVIL APPELLATE JURISDICTION**

**THURSDAY, THE TWENTY EIGHTH DAY OF APRIL TWO THOUSAND AND TWENTY TWO
PRESENT**

THE HON`BLE MR.JUSTICE C.V.KARTHIKEYAN

CMP(MD) . NO.5445 OF 2020

IN

REV. APLC(MD) .SR.36822 OF 2020

IN

AS (MD) .NO.33 OF 2005

1. Vaideki (Died)
 2. Sasikala
 3. Vandaarkuzhali (Died)
 4. R. Paranthaman
- ... Petitioners/Appellants

(4th Petitioner is brought on
Record as LR of the deceased
1st Petitioner vide court order
dated.11.03.2022 made in
CMP(MD)Nos.11215 & 11216 of 2021)

Vs

1. G.Gosalchandran
 2. Vasumathi (Died)
- ... Respondents/Respondents

Prayer in CMP(MD).No.5445/2020 :-

to condone the delay of 1224 days in filing the above
Review Application in Review Appl.No.SR.No.36822 of 2020 and thus
render justice.

Prayer in Rev.AplC(MD).SR.36882 of 2020 :-

Petition filed under Section 47 Rule 1 R/w Sec.114 of
C.P.C. To review the order passed in Appeal Suit in A.S(MD).No.33 of
2005 dated 24.04.2017.

Prayer in AS (MD) .No.33 of 2005:-

The Memorandum of Grounds of Appeal Suit filed against I.A
No.180/1992 in O.S No.86/1989 dated 16/04/2001 on the file of the
Principal Sub-Court, Kumbakonam.

ORDER:- This Petition coming on for orders on Wednesday, the
Twentieth day of April Two housand and Twenty Two and upon
perusing the petition and the affidavit filed in support thereof and
upon hearing the arguments of Mr.T.Lajapathi Roy, Advocate for the
Petitioners and of Mr.T.Sathiyathan, Advocate for the 1st
Respondent, having stood over for consideration, till this day, this
Court made the following order:



This Petition has been filed seeking to condone the delay of 1224 days in filing the review application in Rev.Aplc(MD).Sr.No. 36822 of 2020.

2. The review application has been filed by the appellants in A.S.No. 33 of 2005 aggrieved by the Judgment dated 24.04.2017 passed by this Court. A.S.No. 33 of 2005 had been filed by the plaintiffs in O.S.No. 86 of 1989 on the file of the Principal Sub Court, Kumbakonam, aggrieved by the order dated 16.04.2001 in I.A.No. 180 of 1992.

3. O.S.No. 86 of 1989 had been filed for partition and separate possession seeking 3/10th share of the suit property. A preliminary decree had been passed on merits after recording both oral and documentary evidence on 26.12.1990. The said preliminary decree had attained finality. No appeal had been filed. Thereafter, I.A.No. 180 of 1992 had been filed by the present applicants/plaintiffs to pass a final decree pursuant to the preliminary decree dated 26.12.1990. The respondents had however filed A.S.No. 664 of 1992 before the Principal Sub Court, Kumbakonam, challenging the preliminary decree. That appeal had been dismissed on 22.11.1995.

4. Thereafter in I.A.No. 180 of 1992, seeking passing a final decree, an Advocate Commissioner had been appointed and he had also submitted his report. The applicants herein had also filed their objections. During the course of hearing of the final decree, the applicants did not examine any witness. On the side of the respondents, the first respondent was examined as RW-1 and an Assistant in Kuthalam, Sub-Registrar Office was examined as RW-2.

5. The learned Sub Judge, Kumbakonam by Order dated 16.04.2001 had passed final decree in I.A.No. 180 of 1992.

6. It had been stated in the Judgement in the First Appeal of this Court, that the learned Sub Judge had carefully gone into all aspects and had declared that the appellants are entitled to 3/10th share in item Nos. 1, 2, 3, 5, 6, 7, 8, 9, 10 of the suit schedule properties. It was also directed that the first respondent should pay costs of Rs.2592.50 to the applicants and that the applicants should pay costs of Rs.3111.50 to the respondent. It was also stated that possession should be handed over accordingly.

7. Observing as above, the First Appeal in A.S.No. 33 of 2005 was dismissed. It was specifically held that no appeal had been against the preliminary decree and therefore, the issue of re-agitating the shares cannot be taken up for consideration.



8. Questioning that Judgement, the review application had been filed by the appellants. In filing the review application, there has been a delay of 1224 days and this application has been filed seeking to condone the delay.

9. In the affidavit filed in support of the application, it had been stated that the applicant had received a communication dated 07.04.2017 received through the Court bailiff delivered on 24.04.2017 from the Registry of the Madurai Bench of Madras High Court stating that their counsel N.Vanchinathan had passed away and that the case was posted to 24.04.2017. It was stated that owing to old age, a counsel could not be immediately appointed. Thereafter, enquiries were made and it was observed that the Appeal had been dismissed. It was also stated that an application for restoration was filed but that was not entertained by the Registry. It was stated that thereafter the second applicant fell sick. It was stated that there has been a delay in filing the review application.

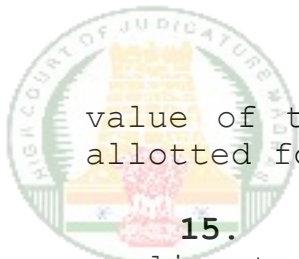
10. It must be mentioned that the application was filed in September 2020 and even if the period from the lock down which was announced from March 2020 to September 2020 is not taken into consideration, still there would be a delay of about 1000 days in filing the review application.

11. A counter had been filed on behalf of the respondents, wherein it had been stated that the delay had not been properly explained. It had been stated that there has been suppression of material facts and therefore, the application should be dismissed.

12. Heard the learned counsels.

13. The review application arises out of a Judgement passed in A.S.No. 33 of 2005 dated 24.04.2017. The counsels were not present but however the Court had the benefit of examining the records and had observed that the preliminary decree had not been questioned by the review applicants but rather only by the respondents who suffered an order of dismissal in their First Appeal. It was also observed that the property had been divided in accordance with the ratio determined in the preliminary decree and that properties had been allotted to the applicants herein.

14. The actual grievance of the appellants is over the value of the agricultural land allotted to the respondents and that therefore they have been put to loss and hardship. This aspect can be addressed if a direction is given to the Principal Sub Court at Kumbakonam to determine the value of the lands allotted by the Commissioner herein to the respective parties and if at all, there has got to be an adjustment made in accordance with the market value, then the respondents may be called upon to pay necessary



value of the lands to equalise the value in accordance with lands allotted for both the contesting parties.

15. A preliminary decree had been passed granting the applicants 3/10th share in the suit schedule properties. The Commissioner had divided the properties in metes and bounds. If, while granting allotment, valuable lands had fallen to the share of the respondents, then the Principal Sub Court can still enter into a discussion and direct necessary moiety to be paid by the respondents to equalise and to bring about parity with respect to the value. That would be an appropriate approach rather than litigating the first appeal. Even in the First Appeal, if it is to be reheard, that is the only order which can be passed.

16. Moreover, while examining the reasons for the delay, it is seen that even in July 2017, the applicants were aware about the pendency of the First Appeal and that it was to be taken up for hearing. Therefore, the reason that they fell sick and were not able to contact or arrange another counsel to be engaged cannot be countenanced. I would put an end to the entire litigation but rather direct the Principal Sub Court if an application is filed, to examine the report of the Advocate Commissioner and determine the market value of each of the item of the suit properties and ensure equity in the value of the lands. The lands allotted cannot be re-allotted. It is not necessary that the Sub Court should follow the report of the Advocate Commissioner blindly and without application of mind. The Sub Court can always re-examine the issues and apply its mind with respect to division by way of value of the properties / market value of the properties.

17. With that particular observation, I hold that the delay has not been properly considered but I would still direct the Principal Sub Court, Kumbakonam, to consider the observations as aforesaid if any application is filed. Accordingly, this Civil Miscellaneous Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CO)

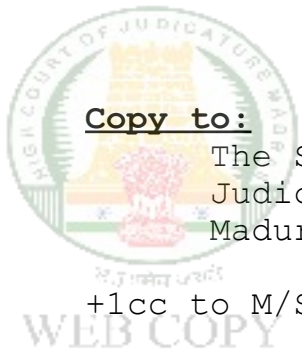
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/ /2022

Sub Assistant Registrar (CS)

To

The Principal Sub Judge, Kumbakonam



Copy to:

The Section Officer,
Judicial Section,
Madurai Bench of Madras High Court, Madurai

+1cc to M/S.T.LAJAPATHI ROY, Advocate, SR.No. 22502 DATED:29.04.2022

ORDER DATED : 28/04/2022

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ORDER
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CMP(MD) . No.5445 of 2020
in
Rev. AplC(MD) .SR.36822 of 2020
in
AS(MD) .No.33 of 2005

Giving direction and etc.
as stated within.

SVS (CO)
GC(10.05.2022) 5P 4C