



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Wednesday, the Twenty Third day of February Two Thousand and
Twenty Two

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PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CMP(MD) No.6977 of 2021

IN

SA No.938 of 2004

1 ANTHONIMUTHU @ SAMY KANNU (DIED) ... APPELLANT

2 AROCKIAMARY
W/O.ANTHONY RAJ

3 A.RAVI KUMAR

4 AROCKIA MARY
W/O.ARULSAMY

5 AROCKIA SUNDARAM

6 SEBASTHIYAN KENNADY ... PETITIONERS 2 TO 6/
PROPOSED APPELLANTS

Vs

1 MANIKKAMMAL (DIED)

2 AADAIKALAM @ RAJU (DIED) ... RESPONDENTS/RESPONDENTS

3 PHILOMINAL

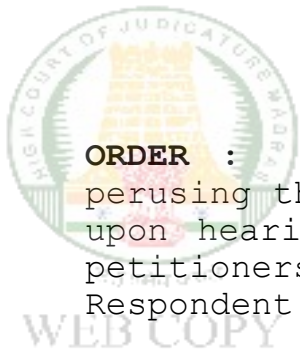
4 ANTHONY MUTHU LAWRENCE ... PROPOSED RESPONDENT 3 & 4/
SOLE APPELLANT

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to condone the delay of 2712 days in filing restore petition in the above S.A.No.938 of 2004.

PRAYER IN SA.No.938 of 2004:

To prefer this Memorandum of Grounds of Second appeal, aggrieved by the Judgment and Decree dated 29.09.2003 made in A.S.No.44/2002 on the file of the Principal District Judge, Pudhukottai confirming the Judgment and Decree dated 31.12.2001 made in O.S.No.100/98 on the file of the District Munsif Cum Judicial Magistrate, Thirumayam.

<https://hcservices.ecourts.gov.in/hcservices/>



ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.S.A.AJMALKHAN, Advocate for the petitioners and of Mr.K.BALASUNDHARAM, Advocate on behalf of the 1st Respondent the court made the following order:-

This petition has been filed to condone the delay of 2712 days in filing the petition to restore the second appeal in S.A.No.938 of 2004.

2. The second appeal has been filed against the Judgment and Decree dated 29.09.2003 made in A.S.No.44 of 2002 on the file of the learned Principal District Judge, Pudukottai, confirming the Judgment and Decree dated 31.12.2001, made in O.S.No.100 of 1998 on the file of the District Munsif cum Judicial Magistrate, Thirumayam.

3. This Court, by Judgment dated 20.09.2012, dismissed the second appeal for non-prosecution, which reads as follows:

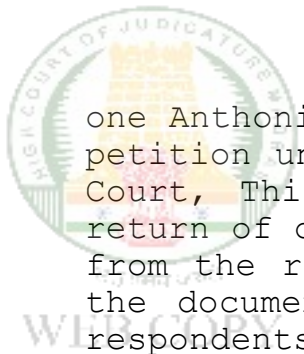
"The learned counsel for the first respondent is present and ready to submit his arguments. The learned counsel for the appellant represented through some other counsel and wants further time to get along with the case. The appeal is posted today for the second time under the caption 'for dismissal'.

2. Considering that this appeal is of the year 2004 and even today for the death of the second respondent, no steps have been taken and the learned counsel for the appellant represented through some other counsel only requested further time to get along with case that too the case is posted today under the caption 'for dismissal' and hence, the request is not considered and rejected. Hence, the second appeal is dismissed for non-prosecution. No costs. Consequently, connected miscellaneous petition is also closed."

4. Since the sole appellant died on 28.02.2017, the legal heirs of the sole appellant filed the present petition to condone the delay of 2712 days in filing the petition to restore the second appeal.

5. The learned counsel appearing for the petitioners submits that the petitioners are the legal heirs of the deceased sole appellant and they came to know about the dismissal of the second appeal only after the receipt of notice in Crl.O.P.(MD)No.9142 of 2020 on 23.07.2021. Immediately thereafter, the present petition has been filed to restore the second appeal. Therefore, he prays for allowing this petition.

6. Mr.K.Balasundharam, learned counsel for the respondents <https://hcservicescourts.gov.in/hcservices/> opposed this petition that the second appeal was filed by

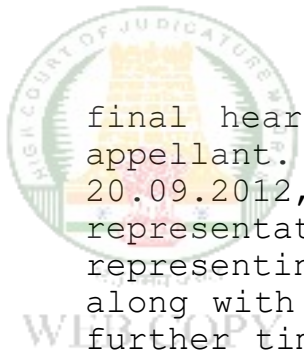


one Anthonimuthu @ Samikannu and he was alive till 2017. He filed a petition under Order 13 Rule 9 of C.P.C. before the District Munsif Court, Thirumayam in R.P.No.36 of 2015 in O.S.No.100 of 1998 for return of documents marked as Ex.B1 to B10 and obtained no objection from the respondent's counsel. In pursuance of the said petition, the documents were returned to the appellant on 12.12.2016. The respondents also filed a petition in R.P.No.33 of 2015 on 13.07.2015 under Order 13 Rule 9 of C.P.C. for return of documents and obtained no objection from the appellant's counsel. In pursuance of the same, their documents were returned in the year 2018. Therefore, according to him, the appellant Anthonimuthu @ Samikannu was very much aware of the dismissal of the second appeal for non-prosecution on 20.09.2012.

7. The learned counsel for the respondents further submits that as both the appellant's family and respondents' family are residing in the same village, they could have very well known about the death of the first respondent in the year 2011. However, no steps have been taken so far to implead the legal heirs of the first respondent. The learned counsel further submits that the third petitioner, namely, Mr.A.Ravikumar is working as Section Superintendent in Agricultural Department and the fifth petitioner, namely, Mr.Arockia Sundaram, is working as Driver in the Tamil Nadu State Transport Corporation, Pudukottai and the sixth petitioner, namely, Mr.Sebasthiyan Kennady, is a Diploma-holder. Therefore, they could have very well known about the proceedings of the second appeal and also the dismissal of the second appeal on 20.09.2012. After the dismissal of the second appeal, the deceased appellant did not take any step to restore the second appeal till 2017. Now, after the receipt of notice in Crl.O.P.(MD)No.9142 of 2020 filed seeking police protection for fencing the land, which is the subject matter of the suit property, the petitioners are agitating the issue by way of filing this petition in order to harass the respondent. He further submits that two other legal heirs of the deceased sole appellant, namely, third respondent, Philominal and fourth respondent Anthonimuthu Lawrence have also not taken any decision to file the present petition along with the present petitioners to restore the second appeal.

8. This Court paid its anxious consideration to the rival submissions made.

9. The second appeal has been filed against the Judgment and Decree dated 29.09.2003 made in A.S.No.44 of 2002 on the file of the learned Principal District Judge, Pudukottai, confirming the Judgment and Decree dated 31.12.2001, made in O.S.No.100 of 1998 on the file of the District Munsif cum Judicial Magistrate, Thirumayam. Pending the second appeal, the first respondent died in the year 2011. Even prior to that, the second respondent also died. However, no steps have been taken to bring on record the legal heirs of the deceased respondents. When the second appeal was listed for



final hearing on 30.08.2012, there was no representation for the appellant. Hence, the second appeal was directed to be listed on 20.09.2012, under the caption "For Dismissal". On 20.09.2012, a representation was made on behalf of the appellant and the learned representing counsel for the appellant sought further time to get along with the case. However, this Court was not inclined to grant further time and dismissed the second appeal for non-prosecution on 20.09.2012. Though the appellant was represented by a counsel on 20.09.2012, the petition to restore the second appeal was filed only on 16.08.2021.

10. Now, the legal heirs of the deceased sole appellant filed the present petition with the delay of 2714 days and the reason assigned by the petitioners that they came to know about the dismissal of the second appeal only after the receipt of notice in CrI.O.P.(MD)No.9142 of 2020, cannot be accepted for the reasons that the sole appellant was represented by a counsel even on 20.09.2012, when the second appeal was dismissed for non-prosecution; after the dismissal of the second appeal, the sole appellant filed a petition for return of documents in R.P.No.36 of 2015 in O.S.No.100 of 1998 under Order 13 Rule 9 of C.P.C. before the District Munsif Court, Thirumayam and also received the documents, which were marked as Exs.B1 to B10.

11. The suit was filed for permanent injunction. Both the Courts below gave concurrent findings in favour of the respondents. The appellant, who lost his case in both forums, had not taken any step to establish his case when the second appeal was listed for final hearing. The first respondent died in the year 2011 and even prior to that, the second respondent also died, however, the appellant did not take any step to implead the legal heirs of the deceased respondents. Even after the dismissal of the second appeal on 20.09.2012, the appellant had not taken any step to restore the second appeal, instead, he filed a petition for return of documents, namely, Exs.B1 to B10 and also obtained those documents, which shows that the appellant was very well aware of the dismissal of the second appeal on 20.09.2012.

12. Since the petitioners have not given sufficient cause for the delay in filing the petition to restore the second appeal, this Court is not inclined to entertain the present petition. Accordingly, this petition is dismissed.

sd/-
23/02/2022

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/ /2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

1 THE PRINCIPAL DISTRICT JUDGE,
PUDHUKOTTAI.

2 THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
THIRUMAYAM.

+1. C.C. to M/S.S.A.AJMALKHAN Advocate SR.No.8401 **(F)**

ORDER
IN
CMP (MD) No.6977 of 2021
IN
SA No.938 of 2004
Date :23/02/2022

SS/JM/SAR.2/13.04.2022/5P/4C