



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:29.03.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

C.M.P(MD)No.10964 of 2017

in

S.A. (MD)No.SR28270 of 2017

WEB COPY

Mayilsamy (died)
1.M.Pongiyammal
2.D.Shantha
3.V.Dhanalakshmi
4.M.Petchimuthu
5.Chandrakala
6.M.Nagaraj

... Petitioners/Appellants

Vs.

Subramanian (Died)

1.Thangaiyan
2.Marimuthu
3.G.Nallathambi
4.Sulochana
5.Valayapathi
6.Nagarajan
7.Balu @ Sivabalu
8.Prakash
9.Sundaresan
10.Neelamegam
11.Balu @ Balasubramanian
12.Panneerselvam
13.Santha
14.Sekar
15.Raman
16.Lakshman

... Respondents/Respondents

... Respondents/Respondents

... Respondents/Respondents

PRAYER in C.M.P(MD)No.10964 of 2017: Civil Miscellaneous Petition filed Section 4 of Limitation Act and Section 151 of C.P.C., to condone the delay of 2634 days in filing the above second appeal against the judgment and decree dated 28.01.2010 made in A.S.No.79 of 2005 on the file of the learned Principal Sub Court, Thanjavur, reversing the judgment and decree dated 29.01.2004 made in O.S.No.465 of 1997 on the file of the District Munsif Court, Thanjavur.

PRAYER in S.A(MD)No.SR28270 of 2017: Second Appeal filed Section 100 of C.P.C., against the judgment and decree dated 28.01.2010 made in A.S.No.79 of 2005 on the file of the learned Principal Sub Court, Thanjavur, reversing the judgment and decree dated 29.01.2004 made



in O.S.No.465 of 1997 on the file of the District Munsif Court, Thanjavur.

For Petitioner	: Mr.V.S.Kumaraguru (No appearance)
For R1 to R3	: Mr.D.Anbarasu
For R4	: Service Awaited
For R5 to R16	: Given Up

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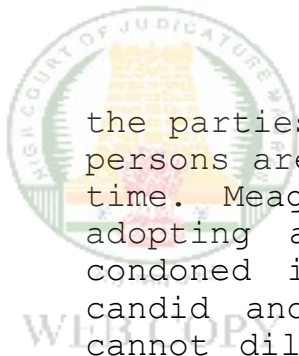
ORDER

This Civil Miscellaneous Petition is filed to condone the delay of 2634 days in filing the second appeal challenging the judgment and decree dated 28.01.2010 made in A.S.No.79 of 2005 on the file of the learned Principal Sub-Court, Thanjavur, reversing the judgment and decree dated 29.01.2004 made in O.S.No.465 of 1997 on the file of the District Munsif Court, Thanjavur.

2.The petitioner states that the respondents 1 to 4 filed original suit in O.S.No.465 of 1997 for declaration and permanent injunction. The suit was dismissed and the plaintiffs filed appeal suit in A.S.No.79 of 2005 before the Principal Sub-Court Thanjavur. The said appeal suit was partly allowed on 28.01.2010. The second appeal is filed in the year 2017 after a lapse of about 7 years from the date of passing of judgment and decree in the appeal suit.

3.The reasons stated in the accompanying the affidavit filed in support of the miscellaneous petition reveals that the husband of the petitioner was a party to the original suit and he was a fifth defendant and the fifth respondent in the appeal suit. The husband of the petitioner died on 11.05.2012 and therefore, the petitioner was not aware of the civil cases pending. Only on 21.02.2017, the petitioner came to know about the decree in the appeal suit, on receipt of notice in execution proceedings. The question arises whether such a statement/reason can be trusted upon. It is an undisputed fact that the first appeal in A.S.No.79 of 2005 was partly allowed by the first Appellate Court on 28.01.2010 itself. The husband of the petitioner was very much alive in the year 2010 and even as per the petitioner, he died only on 11.05.2012 after a lapse of more than 2 years from the date of judgment and decree in the appeal suit. Even thereafter, the second appeal was not filed, the petitioner took further 5 years and totally about 7 years for filing the present second appeal.

4.Law of limitation is to be followed in all circumstances. Condonation of delay is an exception. Exception sought to be exercised exceptionally, only when reasons are adequate enough to condone such enormous delay. the Courts cannot condone the huge delay in a routine manner. In the event of condoning such huge delay, the rights of the decree holder is prejudiced. The rights of



the parties are to be equally protected by the Courts. The aggrieved persons are expected to file an appeal within a reasonable period of time. Meagre amount of delay may be condoned by the Courts by adopting a liberal approach. However, enormous delay cannot be condoned in a routine manner, unless the reasons furnished are candid and convincing. By condoning enormous delay, the Court cannot dilute the law of limitation in the event of such routine condonation of delay, the purpose and object of law of limitation is not only diluted, it will result in causing of prejudice to the other parties to the litigations. Therefore, all mitigating factors are to be considered, while condoning the delay in filing the appeals.

5.This being the factum, the petitioners have not sufficiently explained the huge delay of 2634 days. The reasons stated are not sufficient enough to condone such huge delay. Thus, this Civil Miscellaneous Petition stands dismissed. No costs. Consequently, the second appeal is rejected at SR stage itself.

Sd/-

Assistant Registrar (CS I)

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/ /2022

Sub Assistant Registrar(CS)

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To

1.The Principal Sub Judge,
Thanjavur.

2.The District Munsif,
Thanjavur.

Copy to:

The Section Officer,V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.P (MD) No.10964 of 2017
in

S.A. (MD) No.SR28270 of 2017
29.03.2022

MGJ(08.04.2022) 3P 5C