



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Wednesday, the Twenty Sixth day of October Two Thousand and Twenty
Two

WEB COPY

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CMP(MD) . No.11996 of 2019
in
S.A(MD)No.450 of 2017

R.M.Shahul Hameed (Died)

1.Katheejathul Kubura

2. Seeni Shakila

3. Kithal Raj Mohamed

4. Seeni Musthabehu

(3 and 4 Petitioner/Appellants Represented

Through Their Power Agent N.Ramanathan)

5. Sithi Ralia

6. Sabea Rani

... Petitioners/Appellants

Vs

Lakshmana Konar

... Respondent/Respondent

Prayer in CMP(MD) . No.11996 of 2019:-

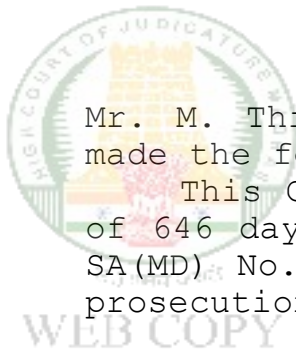
Civil Miscellaneous Petition filed Under Section 5 of Limitation Act Pleaded to condone the delay of 646 days in filing the petition to restore in SA(MD)No.450 of 2017 which was dismissed for non prosecution on 25.01.2018.

Prayer in S.A(MD)No.450 of 2017:-

Second Appeal filed under Section 100 of the Civil Procedure Code against the decree and judgment passed in A.S.No.48 of 2007, dated 15.09.2014 on the file of the Sub Court, Ramanathapuram confirming the decree and judgment in O.S.No.20 of 1995, dated 10.12.2002 on the file of the District Munsif Court, Ramanathapuram.

ORDER:- This Civil Miscellaneous Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/s. J.M. Hassanul Bazari, Advocate for the Petitioners and of

<https://www.mhc.tn.gov.in/judis>



Mr. M. Thirunavukkarasu, Advocate for the respondent, through his counsel, made the following order:

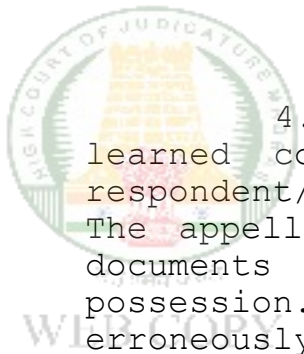
This Civil Miscellaneous Petition is filed to condone the delay of 646 days in filing the petition to restore the Second Appeal in SA(MD) No.450 of 2017, which was dismissed by this Court for non-prosecution on 25.01.2018.

2.The Second Appeal is filed as against the concurrent findings of the Courts below in A.S.No.48 of 2007, dated 15.09.2014 confirming the Judgment and decree passed in O.S.No.20 of 1995 dated 10.12.2002.

3.The appellant/plaintiff filed the above suit for the relief of declaration and for permanent injunction with regard to the suit schedule property in Survey.No.321/1B to an extent of 1.10 acres. The case of the plaintiff is that he is the owner of the suit schedule property ancestrally and there was a partition suit in O.S.No.176 of 1963 among the family members. He purchased the property vide document under Ex.A1, dated 05.04.1970. The respondent/defendant is a cultivating tenant and he has admitted the same in his written statement and by claiming that he purchased a portion of the property from two of the share holders, he attempted to disturb the possession of the appellants' property and therefore, he filed the above suit. The appellant has also filed 39 documents to show that he was in possession of the property. However, the trial Court has erroneously dismissed the suit by its judgment and decree dated 10.12.2002 and the appeal filed before the Sub Court, Ramanathapuram in A.S.No.48 of 2007, as against the judgment and decree passed in O.S.No.20 of 1995 was also dismissed on 15.09.2014 and therefore, the present Second Appeal is filed on the following substantial questions of law:-

- 1) Whether the Courts below had not properly appreciated the pleadings and evidences of the parties and whether the Courts below can re-appreciate the same?
- 2) Whether the lower Appellate Court committed gross illegality in giving final adjudication on the title of the appellant, on the basis of patta, chitta and adangals in a suit for declaration?
- 3) Whether the Courts below are correct in referring the Commissioner's report filed in one suit cannot be looked into for any other suit without examining the commissioner?
- 4) When through Ex.A.11, the respondent/defendant admitted the possession of appellant, whether the lower Appellate Court is right in rejecting Ex.A11 legal Notice?

- 5) When the admission was made in legal notice regarding possession of appellant, whether the legal notice can be taken as pleadings or not?

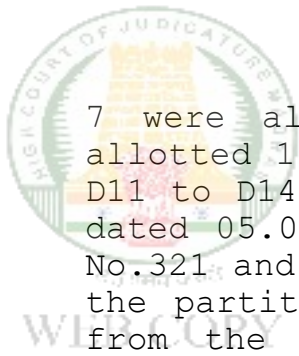


4. In support of the above substantial questions of law, the learned counsel appearing for the appellant submits that the respondent/defendant has admitted that he is a cultivating tenant. The appellant has also established his case by way of filing 39 documents before the trial Court to substantiate that he was in possession. Even then, the trial Court dismissed the suit erroneously and the first Appellate Court confirmed the same. The Courts below have also failed to consider the documents Ex.A1, by which, the appellant had purchased the suit schedule property.

5. The learned counsel appearing for the respondent/defendant submits that the appellant has not approached the Courts with clean hands. He has taken three different stands in the suit that he has acquired the property through their ancestors, purchased the property from one of the shareholders by Document Ex.A1 and also by claiming adverse possession. He further submits that the property was originally belonged to one Syed Mohammed Thambi Marakkayar. One of his daughter Sheik Dawood Ammal filed the suit in O.S.No.176 of 1963, for partition before the District Munsif Court, Ramanathapuram, wherein preliminary decree was passed on 08.02.1965. Thereafter, final decree was also passed on 07.11.1966 in I.A.No.882 of 1965. The plaintiff was allotted 4/16 share in the total extent of properties and the plaintiff's father one Ravuthar Mohammed Marakkayar, who is the first defendant in the above suit was allotted 4/16 share. The defendants 2 to 7 in the above suit were allotted 3/16 share. The defendants 8 & 9 were allotted 1/16 share respectively. The defendants 10 to 14 were allotted 2/16 share in Survey No.321. The plaintiff has purchased a portion of the property from the share allotted to D11 by way of document Ex.A1. Insofar as 1/16 share is concerned, though the document Ex.A1 prescribes that it is 1/16 share, the plaintiff has created the document as if the land to an extent of 3 acres and 16 cents. According to the learned counsel for the respondent, by creating the document as if the appellant/plaintiff has purchased 3.16 acres, he filed the above suit. The appellant has not approached this Court with clean hands and considering the materials placed before the Court, the trial Court has rightly dismissed the suit and the Appellate Court has also rightly confirmed the same. Therefore, there is no reason to interfere with the judgment and decree passed by the Courts below.

6. This Court considered the rival submissions made and the substantial questions of law raised in this second appeal.

7. The subject suit schedule property in Survey No.321 is belongs to one Syed Mohammed Thambi Marakkayar. One of his daughter Sheik Dawood Ammal filed the suit in O.S.No.176 of 1963 for partition. The properties of Syed Mohammed Thambi Marakkayar were divided into 16 shares among his legal heirs. The plaintiff's father, namely, Ravuthar Mohammed, who is also a legal heir was allotted 4/16 share in Survey No.21. Similarly, the defendants 2 to



7 were also allotted 3/16 share. The defendants 8 to 14 were allotted 1/16 share. The plaintiff has also purchased the shares of D11 to D14 (1/16 share), by way of the registered sale deed, Ex.A1, dated 05.04.1970. The defendant was a cultivating tenant in Survey No.321 and he was paying rent to the defendant for some time. After the partition, the respondent/defendant has purchased 1.74 ½ cents from the legal heirs of the sixth defendant Mohammed Hussain Marakkayar (the wife and children). The defendant has also purchased a portion of the property in Survey No.321 to an extent of 1.74 ½ cents through registered document Ex.B4, dated 02.11.1995 from the wife and children of sixth defendant/Mohammed Usain Marakkayar. He also purchased 2.32 cents vide Ex.B5, dated 11.06.1997 from the eighth defendant/Chellammal alias Mohammed Aysia Ummal (D8 in O.S.No.173 of 1963)

8. Both the plaintiff and the defendant have not challenged these documents Ex.A1, Ex.B4 & Ex.B5. Both the parties have purchased the property from the legal heirs of the Syed Mohammed Thambi Marakkayar, by way of a registered sale deed. The properties have not been identified and apportioned in the final decree proceedings passed by the trial Court in I.A.No.885 of 1965 in O.S.No.176 of 1963. The defendants 2 to 14 in the above suit have not paid the necessary court fee at the time of final decree proceedings. Therefore, apportionment of the properties have not been done, which resulted in the suit. In the absence of any materials, that documents Ex.A1, Ex.B4 & Ex.B5 are not invalid. Both the plaintiff and the defendant are entitled to their respective shares as per the allotted shares to their vendors in O.S.No.176 of 1963.

9. Therefore, this Court is not inclined to entertain this Civil Miscellaneous Petition, which is filed to condone the delay of 646 days in filing the petition to restore the second Appeal in SA (MD) No.450 of 2017. However, liberty is granted to the appellants to file a separate suit for demarcation of the properties, as per the decree passed in O.S.No.176 of 1963.

10. Accordingly, this Civil Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/12/2022

Sub Assistant Registrar (CS)

VRN



TO

1. The Sub Court,
Ramanathapuram.

2. The District Munsif,
Ramanathapuram.

Copy to:

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

ORDER DATED : 26/10/2022

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ORDER

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CMP(MD) . No.11996 of 2019
in
S.A(MD)No.450 of 2017

Giving direction and etc.
as stated within.

RD(27/12/2022) 5P 4C