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CMP.No.4861 of 2022
in
A.S. SR.No.12540 of 2022

S.M.SUBRAMANIAM.J.,

The Civil Miscellaneous Petition has been filed to condone the delay of 1971 days in filing the Appeal Suit against the Judgment and Decree dated 01.06.2016 passed in OS.No.88 of 2012.

2.The reason stated by the petitioner for the delay is that the petitioner and his vendor had not been arrayed as party in the suit filed by the respondents. The suit for partition was instituted in collusion between the parties and without impleading the petitioner or his vendor. The petitioner states that he is in physical possession and enjoyment of the suit property and behind his back, the decree was obtained and therefore, he had no knowledge about the suit during the relevant point of time. After the suit was decreed and when the Advocate Commissioner came to the subject property for measurement, the petitioner came to know about the suit and immediately he has taken steps to file an appeal. Therefore, the delay of 1971 days in filing the Appeal Suit is neither willful nor wanted.



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3.In view of the fact that the petitioner was not a party to the suit and had no knowledge about the suit, and more so, he is in physical possession of the subject property, the reason stated by the petitioner is acceptable and consequently, the delay of 1971 days in filing the Appeal Suit is condoned and the Civil Miscellaneous Petition stands allowed.

16.02.2023

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NOTE: The Registry is directed to number the above Appeal Suit, if it is otherwise in order.

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