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C.M.P.No. 15700 of 2022

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in
S.A. Sr. No.82721 of 2022

P.T.ASHA, J.

The above petition is filed to condone the delay of 4511 days in filing the above Second Appeal. The reasons which have been given for the delay are as follows:

(a)The appellant being an aged lady that too from remote village took time to contact her counsel who was attending her case. After locating his whereabouts she came to learn that he had shifted his practice to Chennai.

(b)The petitioner thereafter obtained the copies of the papers and she was advised to file an appeal. Since she had very limited resources, she had approached the State Legal Aid and she was also assigned a counsel. She had believed that the appeal would have been filed and she was also not



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able to contact the person whom she entrusted the papers. Thereafter, she came to learn that he was no more.

(c) Thereafter, the petitioner was advised to apply for the fresh certified copies of the entire papers and after obtaining the certified copies, the Country had gone under the lock down on account of COVID Pandemic.

Therefore, there is a delay of 4511 day.

2. A counter has been filed by the respondent inter alia contending that the delay was inordinate and that the explanations given for condoning the same is inadequate.

3. The learned counsel for the petitioner would submit that the suit in question was filed for partition based on a Will dated 07.04.1982 executed by one Alrajah Gounder in favour of the plaintiffs who are the sisters of the defendants. Under this Will, the



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property were devolved on the wife of Alrajah Gounder and plaintiffs 1 and 2. The said Alrajah Gounder had also made a provision in the Will for the defendant's children.

4. The plaintiff would submit that their mother Kannammal, had died intestate and the plaintiffs and the defendant were entitled to her $1/3^{\text{rd}}$ share. As a result, the plaintiffs 1 and 2 become entitled a $5/12^{\text{th}}$ share each and the 3^{rd} plaintiff and the defendant become entitled to a $1/12^{\text{th}}$ share each in the suit property. The defendant was in possession and enjoyment of the property as a co-owner. The plaintiffs requested for partition which was not acceded to, which prompted them to file the suit in O.S.No.527 of 1998, on the file of the Principal District Munsif, Vellore.

5. The learned Principal District Munsif, Vellore, proceeded to decree the suit, against which the defendant had preferred and appeal in A.S.No.73 of 2007 on the file of the Sub Court, Vellore. The learned Sub Judge, Vellore, reversed the said Judgement and



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Decree, against which the present Second Appeal has been filed.

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6. The defendant in his written statement had taken out a defense that the property in question was an ancestral property in which only Alrajah Gounder and the defendant had a share and neither the wife nor daughters of Alrajah Gounder had a right over the same. He would submit that after the death of Alrajah Gounder, he became exclusively entitled to the property and the plaintiffs have no right to the same.

7. Even from a reading of the written statement where the defendant sets out a title to himself, he is silent about how he become absolute owner of the half share of the father, who died intestate, to which the mother and the sisters would also be entitled to. The Lower Appellate Court has completely non-suited the appellant, not even granted a share in the father's half share. This is the substantial question which is involved in the above Second Appeal. Further, the father had executed a Will which appears to



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have been proved by the plaintiffs.
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8. In these circumstances, though the delay is inordinate however taking into account the fact that there is a substantial question of law involved, this Court is condoning the delay. However, considering the inordinate delay, the same is allowed on terms. The appellant shall pay a sum of Rs.10,000/- to the learned counsel for the respondent on or before 30.10.2023.

9. Post the matter under the caption "*For Reporting Compliance*" on 31.10.2023.

19.10.2023

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