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C.M.P.No.17757 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.P.No.17757 of 2023

in

A.S.Sr.No.98811 of 2023

R.Anantharaman

... Petitioner/Appellant

Vs.

R.Vijayakumar

... Respondent/Respondent

PRAYER: Civil Miscellaneous Petition filed under Order 41 Rule 3 (A) of the Civil Procedure Code to condone the delay of 2444 days in filing the above A.S.S.R.No.98811 of 2023.

For Appellant : Mr. G.V.Sridharan

For Respondent : M/s.R.Chitra
for M/s.Babu Rangasamy Associates

JUDGMENT

The unsuccessful defendant in the suit for partition has preferred this appeal however, with a delay of 2444 days. The reasons for the delay



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stated in the petition are as follows:

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“I submit that I have not filed the above appeal in time due to the reasons that there is nobody to assist me and due to Corona and more death's in my wife's family.”

2. The parties to the suit are brothers and the dispute is with reference to the property of the father who had died intestate on 02.02.2010. In the written statement, the defendant has clearly admitted that the plaintiff also has a share in the suit property. In paragraph 5 of the written statement, the defendant has stated as follows:

“ This defendant further states that the present suit is for partition of immovable property of the deceased father of the Plaintiff and Defendant. This Defendant accepts and admits that the Plaintiff is entitled to half share in the suit property and



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*there is no objection for the relief as prayed
for by the Plaintiff, even though all the other
allegations are not admitted.”*

3. The suit was decreed as early as on 01.08.2016. However, the first appeal was filed only on 31.07.2023 and therefore, this application for condonation of delay. I have extracted the reasons *supra*.

4. The respondent/plaintiff has filed a counter affidavit in which it has been stated that the plaintiff has also taken out an application for passing of final decree in I.A.No.2 of 2022 and an Advocate Commissioner has also been appointed to divide the property by metes and bounds. However, the appellant/defendant has not granted permission to Advocate Commissioner to enter the premises. Since the appellant/defendant has not allowed the Advocate Commissioner to enter the premises, the respondent/plaintiff was constrained to file an application I.A.No.4 of 2023 seeking the police aid and ultimately, on 09.09.2023, the Advocate Commissioner has visited the property with the



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assistance of the police and has submitted his report dated 20.09.2023.

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5. The appellant had not taken any steps whatsoever to file an appeal till then and it is only when the respondent has taken an application for police aid, then, this application has come to file. Therefore, the respondent sought for the dismissal of this application.

6. Heard the learned counsel on either side and perused the materials available on record.

7. The suit has been decreed as early as on 01.08.2016. The records would show that the appellant has applied for the copy of the judgment and decree only on 28.06.2023, just before the filing of this application. Therefore, the contention of the respondent that the appeal has been filed only after the respondent has taken steps to obtain the police aid appears to be true. The appellant/defendant has not given any reason for this delay.



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8. The appellant/defendant has himself admitted that the respondent/plaintiff has a share in the property and therefore, there appears to be no serious contest to the suit. Further, the affidavit filed in support of this application for condonation of delay is totally bereft of details and the delay is unexplained.

9. In the circumstances, I see no reason to condone the enormous delay of 2444 days in filing the appeal.

Accordingly, C.M.P.No.17757 of 2023 is dismissed. Consequently, the first appeal in A.S.Sr.No.98811 of 2023 is also rejected. No costs.

09.10.2023

Index : Yes/No
Speaking order/non-speaking order
ssa/apd

To

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1. Additional Judge,
XIX Additional City Civil Court, Chennai.

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2. The Section Officer, V.R.Section, High Court, Madras

P.T.ASHA, J.,

ssa/apd

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