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C.M.P.No.22297 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2023

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.P.No.22297 of 2023

in

SA.SR.No.101068 of 2023

[C.M.P.No.22297 of 2023]

M.Kulandhaivel

... Petitioner/Appellant

Vs.

Arulmighu Adhi NarayanaPeruml Mariyamman
Thirukovil Thirupanikkulu Arakkattalai
Rep. by its President,
S.Raja Gounder,
Mulluparakadu, Okkilipatti O.Rajapalayam
Thiruchengode Taluk
Nmakkal District.

... Respondent/Respondent

PRAYER in C.M.P.No.22297 of 2023: Civil Miscellaneous Petition filed under Section 5 of Limitation Act R/W. 151 of Civil Procedure Code to condone the delay of 403 days in filing the above Second Appeal S.A.SR.No.101068 of 2023.



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[SA.SR.No.101068 of 2023]

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M.Kulandhaivel

... Appellant

Vs.

Arulmighu Adhi Narayana Perum Mariyamman
Thirukovil Thirupanikkulu Arakkattalai
Rep. by its President,
S.Raja Gounder,
Mulluparakadu, Okkilipatti O.Rajapalayam
Thiruchengode Taluk
Nmakkal District.

... Respondent

PRAYER in SA.SR.No.101068 of 2023: Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree passed in A.S.No.15 of 2019 dated 15.11.2021 on the file of Subordinate Judge, Thiruchengode, confirming the Judgement and Decree passed in O.S.No.281 of 2012 dated 27.06.2023 on the file of District Munsif, Thiruchengode.

For Appellant : Mr. R.P.Ruban Chakravarthy

For Respondent : M/s.A.Thameen Mohideen



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JUDGMENT

WEB COP The above petition is filed to condone the delay of 403 days in filing the above Second Appeal.

2. The respondent after service of notice has filed their counter opposing the condonation of delay and contending that there is no substantial question of law involved in the above Second Appeal. Therefore, before considering the applications for condonation of delay, the facts which have led to the filing of the above Second Appeal are herein below briefly extracted and the parties are referred to in the same ranking as before the Trial Court.

3. The plaintiff trust had filed a suit for an injunction restraining the defendant from interfering with the construction work of the temple and the administration of the trust. It is the case of the plaintiff that the suit property belongs to the temple and since the buildings had become dilapidated, the villagers had decided to reconstruct the temples. For this



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purpose, the plaintiff trust was formed and registered on 01.02.2010. The Executive Committee of the trust had raised funds from the public and the work had commenced on 04.06.2010 and the Kumbhabishegam of the temple was held on 07.11.2011.

4. The plaintiff would contend that the defendant is interfering with the administration of the temple and he was demanding that the same be handed over to him and had created problems at a village meeting on 12.08.2012. The defendant was attempting to take advantage of his political clout. Therefore, left with no other alternative the plaintiff trust has come forward with the suit in question.

5. The defendant had filed a written statement inter alia contending that the temple has been built by the villagers belonging to three communities namely, Kongu Vellalars, Gounders and Naickers. It is the three communities that were jointly running and managing the activities of the temple and celebrating the temple festivals. During the temple



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festivals, each of the community members were given a specific task.

However, the plaintiff trust without following this practice and by just involving a few people had proceeded with the renovation work of the temple. The villagers had not been consulted when the Committee was formed. The defendant would contend that he had been the Dharmakarta from 1985 to 1995 and thereafter from 2007 to date. He had formed a Committee on 27.08.2012 and this Committee is over-seeing the work of the temple.

6. The Trial Court on considering the evidence on record had decreed the suit which was confirmed in appeal and it is challenging the said judgment and decree that the defendant is before this Court.

7. However, the appeal has been filed with a delay of 403 days. In the affidavit filed in support of the condone delay petition, the defendant has submitted that the judgement came to be passed on 15.11.2021 at which point in time the Covid protocol was in place. Therefore, he was



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unable to meet his counsel to give necessary instructions for filing the appeal. Thereafter, he would submit that in the month of September 2022, he had been affected by Jaundice and was bed ridden for over a month. On his recovery, he had met his counsel before the Lower Court and obtained the order copies but due to his health condition, the doctor had advised him not to travel. Thereafter, he had raised funds and come to meet his counsel in the fourth week of June 2023. Consequently, the delay has occurred. The delay is neither willful nor wanton but for the reason stated above.

8. The plaintiff who has entered caveat in the above matter has opposed the same on the ground that the reasons given in the affidavit are absolutely false and that there is no merits in the appeal.

9. Heard both sides.



10. A perusal of the judgements of the Courts below would clearly show that the contention of the defendant that the plaintiff trust has been formed without following the procedure and without involving the villagers is absolutely false. The plaintiff has marked Ex.A.1 which is a resolution passed by the villagers on 24.01.2010, wherein it was decided to form the plaintiff trust and to commence the renovation work of the temple. Interestingly, the defendant has himself participated and signed in this document. After doing so, he has started questioning the right of the plaintiff trust to proceed with the renovation work and the administration of the temple. It is informed that the Kumbhabishegam in the temple has been held on 07.11.2011 much before the filing of the suit in question and the trust is smoothly running and managing the affairs of the temple. Therefore, on merits also the defendant has not made out any case for interfering with the judgement and decree of the Courts below.

11. Be that as it may. The defendant has not provided any details as to the period from which he has been suffering from Jaundice which had



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prevented him from approaching his Advocate apart from the time of lock down during the Covid Pandemic. Therefore, the defendant/petitioner has not come forward to provide sufficient reasons for condoning the delay.

12. Therefore, the CMP.No.22297 of 2023 is dismissed and consequently, the Second Appeal in SA.Sr.No.101068 of 2023 is also stands rejected at S.R. stage itself. No costs.

11.10.2023

Index : Yes/No

Speaking order/non-speaking order

Neutral Citation: Yes/No

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To

1. The Subordinate Judge, Thiruchengode
2. The District Munsif, Thiruchengode.
3. The Section Officer, V.R.Section, High Court, Madras



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P.T.ASHA, J.,

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