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C.M.P.No.17406 of 20



C.M.P.No.17406 of 2022
in S.A.S.R.No.108296 of 2022

A.D.JAGADISH CHANDIRA, J.

This Miscellaneous Petition has been filed seeking to condone the delay of 848 days in filing the Second Appeal against the judgment and decree passed by the Subordinate Court, Kancheepuram, in A.S.No.84 of 2012 dated 28.02.2019, confirming the decree and judgment passed by the Additional District Munsif Court, Kancheepuram in O.S.No.426 of 2003 dated 15.09.2012.

2. It is submitted by the learned counsel for the petitioners/appellants that petitioners had filed the suit in O.S.No.426 of 2003 on the file of the Additional District Munsif Court, Kancheepuram, seeking a decree for a declaration that the first plaintiff is the absolute owner of the plaint schedule property or in the alternative for a declaration that the plaintiffs 1 to 4 are the absolute owners for 22/24 shares for a consequential injunction restraining defendants 1 and 2 and their men to interfere with the peaceful possession and enjoyment of the plaint schedule property and also



for declaring the sale agreement dated 10.03.2003 in favour of the 1st defendant by the 2nd defendant is not valid and binding upon the plaintiffs to the extent of 22/24 shares and to declare the will dated 14.12.1995 as a fraudulent document and hence not genuine and true and not binding upon the heirs of the deceased Sundariammal.

3. Learned counsel for the petitioners further submitted that the suit was dismissed by the learned Additional District Munsif, Kancheepuram on 15.09.2012, against which, the plaintiffs had filed the appeal suit in A.S.No.84 of 2012 on the file of the learned Subordinate Judge, Kancheepuram and the same was dismissed on 28.02.2019. He further submitted that during the pendency of the first appeal, the petitioner's brother Thambi Durai died on 10.02.2015, subsequently, his father passed away on 20.02.2017, and thereafter, the petitioners had applied for the certified copies of the judgment and decree passed in A.S.No.84 of 2012 and it was made ready on 05.03.2020. While, he was taking steps to file the second appeal, Covid 19 pandemic started and thereby, the Courts were closed. During such time, the petitioners have initiated the mediation and settlement talks and further, during covid, two of his family members have also passed away.



4. Due to the said incidents happened in the family, the petitioners were unable to file the second appeal within time and thus, after the regular reopening of the Courts, the Second Appeal was filed on 28.09.2022 with the delay of 848 days. He also submitted that the delay in filing the Second Appeal is neither wilful nor wanton but only due to the aforesaid reasons. Hence, he seeks for condone the delay of 848 days in filing the Second Appeal.

5. The second respondent has filed the Counter Affidavit objecting for condoning the delay.

6. Learned counsels appearing for the first and second respondents vehemently opposed for allowing the petition and submitted that no settlement talks were initiated, however, they have conceded that there were some deaths in the family.

7. Mr.P.Navaneethakrishnan, learned counsel entered appearance for respondents 3 to 7, expressed that he has no objection for this petition being allowed.



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8. Taking into consideration the facts and circumstances of the case, this Court, having found that the reasons adduced in the affidavit filed in support of this petition are satisfactory, this miscellaneous petition ordered and thereby, the delay of 848 days in filing the second appeal is condoned.

9. Registry is directed to number the main appeal, if it is, otherwise, in order.

19.09.2023

ham/shl

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19.09.2023