



CMP No.18386 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2023

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CMP No.18386 of 2022

in

SA SR.No. 98414 of 2022

1. C.Uma
2. Sujatha

...

Petitioners/Appellants

Vs

1. Saraswathi
2. Vijayalakshmi
3. Anbu
4. Sridhar

...

Respondents/Respondents

PRAYER : Civil Miscellaneous Petition filed under Order 41 Rule 3A and Order 42 Rule 1 of CPC to condone the delay of 1475 days in filing the above second appeal.

For Petitioners : Mr.M.Sivavarthan

For Respondents : No appearance

ORDER

This petition has been filed to condone the delay of 1475 days in filing the second appeal.

2. The petitioners are the plaintiffs and the respondents are



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the defendants. The plaintiffs filed a suit for partition. The claim of the petitioners is that the husband of the first petitioner one Seenu Gounder had two wives. The first wife is the first defendant and the first plaintiff is the second wife. Through first wife, the defendants 2 to 4 were born and through the first plaintiff, the second plaintiff and one son were born. Therefore, the plaintiffs and the defendants 2 to 4 are the legal heirs of the said Seenu Gounder. He died on 22.09.1999. The first defendant is not the legal heir as she is the divorced wife of the said Seenu Gounder. Therefore, the petitioner sought for partition in respect of the suit property. However, the petitioners failed to prove that the first petitioner is the legally wedded wife of the said Seenu Gounder and the second petitioner is the legitimate child of the said Seenu Gounder. No documents were filed by them in order to prove their contention. Therefore, both the Courts below dismissed the suit for partition, since they are not the legal heirs of the said Seenu Gounder.

3. That apart, a perusal of the affidavit filed in support of the condone delay petition reveals that after dismissal of the appeal suit, the petitioners herein are not able to make arrangements to file the



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second appeal since they are in financial crunch. The first petitioner is suffering from various ailments due to her age and she had no source of income. Therefore, they could not meet out the advocate fees and expenses and arrange for the certified copies of the judgment. Therefore, there was a delay in 1475 days in filing the second appeal. There was lockdown in the year 2020 and as such, the delay of 1475 days is neither wilful nor wanton.

4. All the reasons stated in the affidavit are not believable.

If the petitioners were suffering with financial crunch, they could have used the other options to file the second appeal without paying Court fee. Admittedly, they did not even produce the certified copies of the Jugement and Decree in time. Therefore, the reasons stated in the affidavit is not at all sufficient to condone the huge delay in filing the second appeal. Therefore, this Court is not inclined to condone the delay of 1475 days in filing the second appeal.

5. Accordingly, the Civil Miscellaneous Petition stands



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dismissed. The SA.SR.No.98414 of 2022 is rejected at SR stage itself.

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No costs.

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Index :Yes/No

Internet :Yes/No

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