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CMP.No.19700 of 2022
in S.A.SR.No.112143 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2023

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THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CMP.No.19700 of 2022
and SA.SR.No.112143 of 2022

1.Masthamma
2.E.Nagaraj

..Petitioners

Vs.

K.Jayakumar

..Respondents

Prayer: Civil Miscellaneous Petition filed under Order IV Rule 9(4) of A.S.Rules, to condone the delay of 1544 days in filing the above Second Appeal against the judgment and decree made in A.S.No.16 of 2014 dated 11.03.2019 on the file of the Subordinate Judge, Udhagamandalam, reversing the judgment and decree made in O.S.No.201 of 2001 on the file of the District Munsif, Uthagamandalam, dated 27.03.2014.

For Petitioners : Mr.J.R.Prabhakaran

For Respondent : Mr.M.Mahamani
for Mr.Naveen Kumar Murthi



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ORDER

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The civil miscellaneous petition has been filed to condone the delay of 1544 days in filing the above Second Appeal against the judgment and decree made in A.S.No.16 of 2014 dated 11.03.2019 on the file of the Subordinate Judge, Udhagamandalam, reversing the judgment and decree made in O.S.No.201 of 2001 on the file of the District Munsif Court, Uthagamandalam, dated 27.03.2014.

2. The petitioners are the defendants and the respondent is the plaintiff in the suit. The respondent filed the suit for declaration and recovery of possession. Though the trial Court dismissed the suit, the First Appellate Court allowed the appeal and ordered for recovery of possession. On the strength of the judgment and decree, the respondent filed an Execution Petition. Pending the Execution Petition, the petitioners preferred this second appeal as against the judgment and decree passed by the First Appellate Court with a delay of 1544 days.

3. A perusal of affidavit filed in support of the condone delay petition revealed that the petitioners are in possession and enjoyment of the suit



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schedule property for the past several years. They purchased the said property by virtue of a Sale Deed dated 31.03.1999. However, without considering the trial Court's decree, the suit has been decreed in favour of the respondent herein. Now, he filed an Execution Petition in E.P.No.7 of 2022 and it is pending for execution. Due to COVID-19, the first petitioner cannot maintain amendment to file this appeal. She is a widow, working as a Coolie and as such, she could not earn money to engage a counsel to file an appeal before this Court. Therefore, the said delay is neither willful nor wanton under the circumstances mentioned above. Now, it is seen that the reasons stated in the affidavit are bald and vague and no specific reasons have been stated for the delay of each and every day's. No sufficient cause is shown to condone the huge delay of 1544 days in filing the Second Appeal.

4. That apart, on a perusal of the records it reveals that the respondent filed the suit for declaration and recovery of possession. According to him, the suit schedule property comprised in R.S.No.3952/1A1A ad-measuring 0.04 acres had been purchased through a registered Sale Deed dated 27.11.1992, vide Doc.No.1026 of 1992. In the said property, the wife of the first petitioner and the father of the second petitioner were permitted to live there. However,



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he failed to vacate the suit property and he filed the suit for injunction in O.S.No.208 of 1994 on the file of the District Munsif Court, Ootacamund, and the same was dismissed by judgment and decree dated 14.08.1995. Thereafter, he died and the respondents blocked the Sale Deed dated 31.03.1999 including the suit property, as if they purchased the property.

5. Therefore, though the Trial Court dismissed the suit, the First Appellate Court rightly allowed the appeal. On the strength of the judgment and decree, the respondent filed E.P.No.7 of 2022 and it is pending. All along, the petitioners are only aware of E.P.No.7 of 2022 after receipt of the notice from the Execution Court, and the petitioners filed the condone delay petition with a delay of 1544 days in filing the Second Appeal, that too, without stating any reason for the huge delay. Therefore, this Court is not inclined to condone the huge delay.

6. Accordingly, the civil miscellaneous petition stands dismissed and the SA.SR.No.112143 of 2022 is hereby rejected.

21.02.2023

Speaking/Non-speaking order

Index : Yes/No

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G.K.ILANTHIRAIYAN.J.

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To

1. The Subordinate Judge, Udhagamandalam.
2. The District Munsif, Uthagamandalam.

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