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CMP.No.22815 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2023

CORAM:

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

CMP.No.22815 of 2022 in
SA.SR.No.138754 of 2022

Maran

... Petitioner

Vs.

Unnamalai

... Respondent

PRAYER: Civil Miscellaneous petition is filed under Section 5 of Limitation Act to condone the delay of 2614 days in preferring the above second appeal in SA.SR.No.138754 of 2022.

For Petitioner : Mr.PA.Sudesh Kumar

For Respondent : Mr.D.Daniel

ORDER

This miscellaneous petition has been filed to condone the delay of 2614 days in preferring the above second appeal in SA.SR.No.138754 of 2022.

2. The petitioner is the defendant in the suit filed by the respondent for declaration and injunction in respect of the suit property. The suit property is admeasuring 3.02 acres comprised in survey No.78/1 situated at Nellivasal



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Village of Jawadhu Hills. The case of the respondent is that the suit property

originally belonged to one, Rangasamy. Joint patta was issued under patta No.53 in the name of Rangasamy and others including the other properties.

The said Rangasamy mortgaged the suit schedule property on 26.06.1985 with Land Development Bank to obtain loan to dig up a well in the said property.

The mortgage deed was registered vide document No.1946 of 1985 and the same was marked as Ex.A6. After demise of the said Rangasamy, his son

Ranganathan inherited those properties. He was also granted UDR patta. The

said Ranganathan executed settlement deed dated 09.04.2007 in favour of the respondent herein. Therefore, she filed suit for declaration and injunction in

respect of the suit properties. The case of the petitioner is that the said suit property along with other properties originally belonged to one, Chinna

Gounder @ Thukkan. He had three sons i.e. Raja Gounder, Chinnasamy and Kulandai. After demise of the said Chinna Gounder @ Thukkan, his sons

jointly enjoyed the suit properties. After mortgaging the said property, there was oral partition between the brothers i.e. Rangasamy, Chinnasamy and

Vellaian. The suit property was allotted in favour of one, Vellaian. He was granted patta. He executed Will bequeathing the said property in favour of the

petitioner herein. After his demise, the Will came in to force and the petitioner



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was also issued patta. Though the respondent claimed that she is in possession and enjoyment of the property, she did not produce any document to prove the same. Therefore, he has got very good case to succeed in the appeal and as such, he prayed to condone the delay of 2614 of days in preferring the appeal. While pending the said petition, the petitioner also filed better affidavit dated 01.12.2022 calculating delay as 1453 days in preferring the above second appeal.

3. The learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Collector, Land Acquisition, Anantnag and Another Vs. Katiji and others*** reported in (1987) 2 SCC 107, in which the Hon'ble Supreme Court of India held as follows:

“..... And such a liberal approach is adopted on principle as it is realized that:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.



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3. *"Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*

4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*

5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*

6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."*

4. The respondent filed counter and stated that the reasons stated in the affidavit filed in support of the condone delay petition are not sufficient. There was a huge delay of 2614 days in filing the appeal and there is absolutely no reason to condone such huge delay. The case of the petitioner is that only after receipt of the notice in EP.No.60 of 2022, he instructed his counsel to prefer the appeal. They have simply stated that the petitioner was



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suffering from Covid-19 and thereafter, there was lockdown. The petitioner was in a remote village and as such he could not able to file appeal in time, which cannot be considered.

5. Heard, the learned counsel appearing on either side.

6. On perusal of record, revealed that the appeal suit was partly allowed by the judgment and decree dated 03.02.2015 in respect of the land admeasuring 3 acres comprised in survey No.78/1 as per Ex.A6. Admittedly, the petitioner is the only son of Vellayan. Therefore, no Will is required to inherit the property belongs to the said Vellayan. Hence, the appellate court rightly decreed the suit in part.

7. On perusal of the affidavit filed in support of the condone delay petition, revealed that the judgment and decree in appeal suit was delivered on 16.08.2019. Since the petitioner is living in a remote village of Javvadu Hills, the judgment and decree were not received by him in time. Further, the Covid-19 situation restricted their movement from their village. However, notice was duly served on him in EP.No.60 of 2022. Therefore, the reasons stated in the



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affidavit are not believable ones. Hence, the judgment cited by the petitioner is not helpful to the case on hand and this Court is not inclined to condone the delay of 1453 days as mentioned in the additional affidavit dated 01.12.2022 in filing the above second appeal.

8. Accordingly, this miscellaneous petition is dismissed. Consequently, the second appeal in SA.SR.No.138754 of 2022 is rejected at the SR stage itself. There shall be no order as to costs.

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Index : Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To

- 1.The Sub Judge,
Tirupattur
- 2.The Additional District Munsif Court,
Tirupattur

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SA.SR.No.138754 of 2022



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