



CMP(MD) No.2492 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Monday, the Thirtieth day of October Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice G.CHANDRASEKHARAN

CMP(MD) No.2492 of 2023

IN

SA(MD)SR.No19930 of 2021

AYYAMMAL

... PETITIONER/ APPELLANT

Vs

K. SINGH (DIED),

... APPELLANT/1st DEFENDANT

1 MARAGATHAMMAL,

2 KUPPUSAMY,

3 INDIRA,

... RESPONDENTS/RESPONDENTS

4 ARULVASAGAN,

5 PITCHAIMANI,

... RESPONDENTS 4 & 5/PROPOSED RESPONDENTS 4 & 5

Civil Miscellaneous Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to condone the delay of 2676 days in filing the above Second Appeal against the Judgment and decree dated 19.07.2013 in A.S. NO. 51 of 2012 before the 6th Additional District Court, Madurai reversing the judgment and decree in O.S. No. 9 of 2011 on the file of the 2nd Additional Sub Court, Madurai dated 07.09.2012 and thus render justice.

PRAYER IN SA(MD)SR.No.19930 OF 2021:

Pleased to set aside the judgement and decree in A.S.No.51 of 2012 on the file of the 6th Additional District Court, Madurai dated 19.07.2013 reversing the judgement

<https://www.mhc.tn.gov.in/judis>



CMP(MD) No.2492 of 2023

and decree in O.S.No.9 of 2011 on the file of the 2nd Additional Sub-Court, Madurai dated 07.09.2012 pending disposal of the Second Appeal.

ORDER : This Civil Miscellaneous Petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.S.A.AJMALKHAN, Advocate for the petitioner and of Mr.G.SAKTHI RAO, Advocate on behalf of the Respondents No.4 & 5 and none appeared for the Respondents No.1 to 3 side either in person or by an advocate, the court made the following order:-

This Civil Miscellaneous Petition is filed to condone the delay of 2676 days in filing the above appeal.

2.It is the submission of the learned counsel for the petitioner that after the disposal of the first appeal, the trial Court counsel did not inform about the result of the appeal. The case papers were returned only in the first week of June. Thereafter, this appeal was filed and this resulted in 2676 days of delay in filing the second appeal.

3.The learned counsel for the respondents 4 and 5 opposed this petition on the ground that the delay is huge. Though notice to the respondents 1 to 3 was served and their names are printed in the cause list, there is no representation for the respondents 1 to 3 and no one appeared for them.

4.It is seen from the records and the submissions of the learned counsel appearing for the parties that the petitioner filed a suit for partition of 1/4th share in the suit properties. Both the Courts below have found that the petitioner is entitled for 1/4th share in all the properties, however the first appellate Court modified the



CMP(MD) No.2492 of 2023

trial Court judgment in respect of item No.9 of the suit property, wherein it held that since the first defendant is in possession and enjoyment of the item No.9 of the suit property for a long time, he may take steps for paying the value of the plaintiff/appellant for 1/4th share in respect of item No.9 of the suit property. This finding, according to the learned counsel for the petitioner, is against the law for the reason that there is no plea of ouster was taken and addressed before the Courts below.

5.Considering the aforesaid reasons and also the reasons for the delay of 2676 days in filing the appeal, this Court is of the view that the petitioner must be given an opportunity to contest the first appellate Court judgment.

6.Accordingly, this Civil Miscellaneous Petition is allowed subject to the payment of cost of Rs.5,000/- to the respondents 4 and 5. On such payment, Registry is directed to number the appeal, if it is otherwise in order.

sd/-
30/10/2023

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/11/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

MM
TO
1 THE VI ADDITIONAL DISTRICT JUDGE,
MADURAI

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CMP(MD) No.2492 of 2023

2 THE II ADDITIONAL SUBORDINATE JUDGE,
MADURAI.

COPY TO:

1 THE SUB ASSISTANT REGISTRAR
A.E. SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

2 THE SECTION OFFICER,
JUDICIAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN
CMP(MD) No.2492 of 2023
Date :30/10/2023

SA/JGB/SAR. /01.11.2023/4P/5C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.