



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

Wednesday, the Seventh day of June Two Thousand and Twenty Three

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PRESENT

The Hon`ble Mr.Justice ABDUL QUDDHOSE

CMP(MD) No.10143 of 2022
in
S.A.(MD).SR.No.37463 of 2022

GANDHI @ RAJAGOPAL(DIED)

1 R.SAROJINI

2 R.JEYASEELAN

3 R.PANDIARAJ

4 SOUNDARAPANDI

5 DURAIPANDIAN ... APPELLANTS/LRs OF APPELLANT/LRs OF PLAINTIFF

Vs

1 NARAYANA MOOPANAR

2 MEENAKSHI SUNDARAM

3 GANESAN

4 PERIYANAYAGAM ... RESPONDENTS/RESPONDENTS

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 534 days in filing the above second appeal.

PRAYER in S.A.(MD).SR.No.37463 of 2022:

Pleased to allow the Second Appeal and set aside the judgment and decree dated 19.07.2018 made in A.S.No.74 of 2012 on the file of Sub-Court, Srivilliputtur, confirming the judgment and decree dated 10.12.2020 made in O.S.No.79 of 2005 on the file of Additional District Munsif Court, Srivilliputtur.

ORDER : This 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.SWATHINI, Advocate for Mr.K.SURESH



KUMAR for the petitioners and of Mr.H.MOHAMMED IMRAN, Advocate for M/s.AJMAL ASSOCIATES on behalf of the 1ST Respondent, the Court made the following order:-

This application has been filed to condone the delay of 534 days in filing the Second Appeal.

2. The petitioners/appellants are the legal representatives of the plaintiff in the suit. The suit was filed for partition. The petitioners claim that the plaintiff, who is the father of the petitioners 2 to 5, purchased the suit property from a co-sharer. Both the Courts below have concurrently held that the plaintiff is not entitled for partition by dismissing the suit as well as the first appeal. The petitioners/appellants have however not filed the Second Appeal on time. Instead, they have filed the same with a delay of 534 days and this application has been filed to condone the said delay.

3. The petitioners pleaded that the father of the petitioners 2 to 5 was infected with tuberculosis. This Court had earlier directed the learned counsel for the petitioners to produce the medical records to substantiate the claim of the petitioners that the father of the petitioners 2 to 5 was infected with tuberculosis. As directed by this Court, the learned counsel for the petitioners has placed before this Court the medical records pertaining to the father of the petitioners 2 to 5, namely, the deceased Gandhi. As seen from the said medical records, Gandhi seems to have been infected with tuberculosis.

4. A counter affidavit has been filed by the first respondent denying the contentions of the petitioners. In the counter affidavit, the first respondent has stated that only to protract the proceedings without giving sufficient explanation for the delay, this application has been filed. Even on merits they would contend that the petitioners/appellants do not have any case.

5. However, being a partition suit and that too, when the petitioners have produced the medical records to show that Gandhi, the deceased was earlier infected with tuberculosis, the reasons given by the petitioners in the affidavit filed in support of this application seems to be satisfactory. However, in view of the inordinate delay of 534 days in filing the Second Appeal, the petitioners/appellants must be put on terms for allowing this application. Accordingly, this Civil Miscellaneous Petition is allowed on condition that the petitioners/appellants deposits a sum of Rs.1500/- (Rupees One Thousand and Five Hundred only) as cost to the Government, Home for aged and poor, Account No.6481560540, Indian Bank, Madurai Bench of Madras High Court, Madurai, within a period



of one (1) week from the date of receipt of a copy of this order. On production of the proof for having made the payment to the aforesaid organisation within the stipulated time, Registry shall number the Second Appeal, if it is otherwise in order and list the same for admission.

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sd/-
07/06/2023

/ TRUE COPY /

/06/2023

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

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TO

- 1 THE SUBORDINATE JUDGE,
SRIVILLIPUTHUR.
- 2 THE ADDITIONAL DISTRICT MUNSIF
SRIVILLIPUTHUR.

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.
- 3 THE OFFICER INCHARGE,
ROJAVANAM, HOME FOR AGED AND POOR,
ULAGANERI,
MADURAI.

+1 CC to M/s.K.SURESH KUMAR, Advocate (SR-8250[I] dated 08/06/2023)

ORDER
IN
CMP (MD) No.10143 of 2022
in
S.A. (MD) .SR.No.37463 of 2022
Date :07/06/2023

SS/BUC/12/06/2023/3P/7C

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