



CMP(MD) No.13868 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)
Friday, the Twentieth day of October Two Thousand and Twenty Three
PRESENT
The Hon`ble Mr.Justice G.CHANDRASEKHARAN
CMP(MD) No.13868 of 2023
in
SA(MD) SR.No.49303 of 2021

1 KANNUSAMY THEVAR,
2 SATHYARAJ,
3 MAHALAKSHMI,
4 RAJALAKSHMI,
5 DEIVANAYAKI,
6 JANAKI,
7 JOTHI BASU,

... PETITIONER/ APPELLANT

Vs

1 RAJATHI,
2 SOUNDARANAYAGI,
3 VELLAIAMMAL,
4 KUPPUTHAI,

... RESPONDENTS/RESPONDENTS

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 560 days in representing SA(MD).SR.No.49303 of 2021.

Prayer in SA(MD) SR.No.49303 of 2021 :

To set aside judgment and decree dated 11.11.2020 made in AS 20 of 2010 on file of the Additional District Judge, Dindigul reversing the judgement and decree dated 23.02.2010 made in OS 240 of 2008 on file of the Subordinate Judge, Palani and dismiss the suit in toto.

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.RAGUVARAN GOPALAN, Advocate for the petitioner and of MR.M.SENGU VIJAY, Advocate on behalf of the Respondents, the court made the following order:-



CMP(MD) No.13868 of 2023

WEB COPY

This petition is filed to condone the delay of 560 days in representing the above second appeal.

2. It is the submission of the learned counsel for the petitioners that the suit in O.S.No.240 of 2008 was filed by the respondents 1 and 2/ plaintiffs before the Sub Court, Palani, for seeking partition. The trial Court relying on the Will produced by the petitioners and finding that there was a partition taken place prior to 1989 Act, dismissed the suit. However, in the appeal in A.S.No.20 of 2010, the learned Additional District Judge, Dindigul, had reversed the judgment of the trial Court and decreed the suit. Against the said judgment, S.A(MD) No. 247 of 2015 was filed. The said second appeal was disposed of, by remanding the first appeal to the learned Additional District Judge, Dindigul. Again, the learned Additional District Judge, Dindigul, pronounced the judgment in tune with the earlier judgment and decreed the suit.

3. The learned counsel for the petitioners further submitted that the appeal was filed in time. However, the papers were returned by the Registry for rectifying certain defects. He further submitted that the earlier counsel, who appeared for the petitioners have been elevated as a Judge of the High Court. However, the petitioners concisely avoided to refer this reason and just stated that for extraneous reasons, there was a delay of 516 days in representing of the appeal. In the said circumstances,



CMP(MD) No.13868 of 2023

he prays for condoning the delay of 560 days in filing the above second appeal.

WEB COPY

4. In response, the learned counsel for the respondents submitted that the respondents filed final decree petition for passing final decree. Advocate commissioner was appointed and he filed his report. The said petition is pending for enquiry for passing final decree. The reasons stated in the affidavit are not correct and each and every day's delay is not explained in the affidavit. If the petition is allowed, the respondents' rights would be greatly prejudiced. Hence, he prays for dismissal of this petition.

5. Considered the rival submissions and perused the records.

6. From the submissions made by the learned counsel appearing for the parties, it is clear that the suit for partition was dismissed by the trial Court and that was reversed by the first appellate Court. In a second appeal filed against the first appellate Court judgment, this Court ordered remand of the appeal to the same Court. The first appellate Court has again passed the judgment in confirmation with the earlier judgment decreeing the suit. This is the suit for partition. The main issue is whether there was a Will in existence in favour of the defendants and whether there was already a partition taken place prior to 1989 Act. In the said circumstances, the core issue, i.e., the substantial question of law involved in this second appeal is to a narrow compass.



CMP(MD) No.13868 of 2023

WEB COPY

7. In this view of the matter and with a view to give an opportunity to the petitioners, this Court is of the considered view that taking into all the relevant circumstances, the delay of 560 days in representing second appeal can be condoned subject to payment of cost of Rs.2,000/- (Rupees Two Thousand only) to the respondents within a period of two weeks from the date of receipt of a copy of this order. Accordingly, this petition is allowed.

sd/-
20/10/2023

/ TRUE COPY /

/11/2023

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

cp
TO

1 THE ADDITIONAL DISTRICT JUDGE, DINDIGUL.
2 THE SUBORDINATE JUDGE, PALANI.

ORDER IN
CMP(MD) No.13868 of 2023
in SA(MD) SR.No.49303 of 2021
Date :20/10/2023

RS/JGB/SAR-(06.11.2023) 4P 3C
Madurai Bench of Madras High Court is issuing
certified copies in this format from 17/07/2023