



CMP(MD) No.12958 of 2022

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

Wednesday, the Eighteenth day of October Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CMP(MD) No.12958 of 2022

IN

SA(MD)SR.No.53492 of 2022

1 THE STATE OF TAMILNADU

REPRESENTED BY ITS DISTRICT COLLECTOR,

OFFICE OF THE DISTRICT COLLECTOR, THANJAVUR DISTRICT,
THANJAVUR .

2 REVENUE DIVISIONAL OFFICER
KUMBAKONAM.

3 TASILDAR
KUMBAKONAM.

... PETITIONERS/ APPELLANTS

Vs

A.VENKATACHALAM

... RESPONDENT/RESPONDENT

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 2831 days in filing the above second appeal filed against the judgment and decree dated 20-12-2012 in A.S.No. 46 of 2011 on the file of the Additional Subordinate Court, Kumbakonam.

PRAYER IN SA(MD)SR.53492 of 2022:

To prefer this Memorandum of Grounds of Second Appeal as against the dismissal of first appeal in A.S.No.46 of 2011 on the file of the Additional Subordinate Judge, Kumbakonam dated 20.12.2012 by confirming the Judgment and Decree passed in O.S.No.255 of 2012 on the file of the Principal District Munsif, Kumbakonam Dated 19.06.2007.

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



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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 Mr.VEERA KATHIRAVAN, Additional Advocate General Assisted by Mr.A.BASKARAN, Additional Advocate General Assisted by Mrs.S.JEYAPRIYA, Government Advocate on behalf of the Petitioners 1 to 3 and of Mr.G.GOMATHI SANKAR, Advocate for the Respondent, the court made the following order:-

Reserved on : 22.09.2023

Pronounced on : 18.10.2023

This Civil Miscellaneous Petition is filed to condone the delay of 2831 days in filing the Second Appeal against the judgment and decree dated 20.12.2012 in A.S.No.46 of 2011 on the file of the Additional Subordinate Court, Kumbakonam.

2. The petitioners have stated reasons in the accompanying affidavit filed along with the Civil Miscellaneous Petition are follows:

The respondent has filed a suit in O.S.No.255 of 2006 before the District Munsif Court, Kumbakonam seeking mandatory injunction against the petitioners to transfer the title with regard to government poramboke land in R.S.No.351/2 measuring 0.23.5 hectares (58 cents) at Koranattu Karuppur, Kumbakonam Taluk. The suit was decreed on 19.06.2007. Aggrieved by the judgment and decree the petitioner preferred the appeal in A.S.No.46 of 2011 before the Additional Subordinate Court, Kumbakonam, which was dismissed on 20.12.2012. The petitioners took steps for preferring the Second Appeal and hence, necessary permission was sought from hierarchy. Unfortunately the case records were



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misplaced and the same could not be traced out in spite of due diligence steps by the staff. There was a hurdle to find the bundle before lower Courts for the purpose of attaching with copy applications. Further in the year 2016 Legislative Assembly election announced and Parliament election announced in the year 2019. Thereafter Covid-19 pandemic declared. Hence, there is a delay of 2831 days in preferring the Second Appeal.

3. The respondent filed a counter and objected the petition and stated as follows:

The respondent and his predecessor are in possession and enjoyment of the suit property, which is a Government Punja land, more than 50 years by paying tax under B-Memo. The respondent presented the petition to the third petitioner, who forwarded the same to the Commissioner of the Revenue Authority. The Senior Auditing Accounts Officer in his proceeding in I.S.R./111/L.R.H/16.903/97-95/215 dated 05.02.1999 sent to the third respondent stating that if the Revenue Authority is not having any objection to transfer the Government waste Punjai lands to the applicant, the third petitioner herein could be transfer the patta to the applicant after getting double charges. Accordingly a challan for Rs.58,536/- was issued and the respondent paid the said sum. Since the third petitioner evaded to issue patta, the respondent filed the suit in O.S.No.255 of 2006 seeking to transfer the suit property to



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the respondent. The suit was hotly contested by the petitioners. Both side adduced evidences and the Trial Court after elaborate discussion decreed the suit. Though the petitioners preferred the appeal in A.S.No.46 of 2011 the appeal was dismissed on 20.12.2012. In the mean time, the respondent filed the Execution Petition in E.P.No.130 of 2010. Though the petitioners appeared and filed a counter and given undertaking that steps are being taken for issuance of patta in favour of the respondent and so, the proceeding was posted on 27.07.2018. Since the Executing Court passed attachment order, the petitioners in a hurried manner have filed this petition with false averments after lapse of 10 years. The petitioners have no valid reason to prefer the Second Appeal and have not properly explained such abnormal delay. Therefore, the Civil Miscellaneous Petition may be dismissed.

4. The learned counsel for the petitioners has argued and submitted that the property involved in the case is public property and revenue land, which is more than 50 cents. The petitioners have been contesting the case from the Trial Court. Since necessary permission is to be sought from higher officials in their department it took a long period. Moreover in subsequent years elections announced and thereafter, due to Covid-19 pandemic national lock down announced. The petitioners being revenue officials fully engaged in those tasks. The public property would not be given transferred, which would be cautiously dealt with. When important



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costs.

questions of law are involved, the delay might be condoned by imposing exemplary costs.

5. Per contra, the learned counsel for the respondent has vehemently contended that the suit property measuring 0.23.5 hectares is Government waste Punja land which has been in possession and enjoyment of the respondent and his predecessor for more than 50 years. The respondent has been paying tax properly under B-Memo. The respondent approached the petitioners department officials and the Auditing Accounts Officer in proceeding in I.S.R./111/L.R.H/16.903/97-95/215 dated 05.02.1999 passed direction to transfer the land and issued challan under which the respondent paid the sum. But, the petitioners evaded to issue patta and transfer the land. Therefore, the respondent filed the suit, which was decreed in his favour and the appeal preferred by the petitioners is also ended in favour of the respondent. The petitioners have no valid case. As the respondent filed E.P wherein the attachment order was passed, as a counter blast the petitioners moved this petition with the delay of 2831 days. The respondent is now aged 80 years and the petitioners prolonged the case to prevent the respondent to enjoy the fruits of the decree. The delay of 2831 days is not an ordinate delay it is abnormal delay. Such delay could not be condoned. Delay occurred on account of lapses, negligence and dereliction of duty on the part of the Government officials cannot be allowed. In support his argument,



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the learned counsel for the respondent has relied on citation reported in 2022(1) R.C.R. (Civil) 505, wherein the Hon'ble Supreme Court held in paragraph No.7.4 as follows:

“7.4the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression ‘sufficient cause’ cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party.....It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions.”

6. Heard both sides and perused the records in this Civil Miscellaneous Petition.

7. It is clear that the suit property is measuring 0.23.5 hectares (nearly 58 cents) in R.S.No.351/2 of Koranattu Karuppur village, Kumbakonam Taluk. It is admitted that the suit property is Government land. The respondent claims that he and his predecessors have been in possession and enjoyment over the same more than 50 years and so, they approached the revenue officials for patta and transfer of land, and they paid Rs.58,536/- as per proceeding of the Senior Auditing Accounts Officer in I.S.R./111/L.R.H/16.903/97-95/215 dated 05.02.1999. The respondent states that



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since the petitioners officials evaded to issue patta, the respondent filed the suit which was decreed in his favour and the appeal is also ended in his favour. The petitioners submit that the revenue department is facing large number of affair in routine officials duties, the case bundle was misplaced and in spite of strenuous efforts taken, the same has not been traced and only traced out now they immediately proceeded with Second Appeal. The petitioners further state that Assembly election and Parliamentary election were announced and after election was completed, Covid-19 pandemic lock down was announced.

8. Both contentions were considered. It is a settled principle that the delay of long period is immaterial if the delay is properly explained. In this case on hand, the petitioners have been actively participating and contesting from the suit and now the E.P.No.130 of 2010 is pending. It is not disputed by the respondent. It is the case of the petitioners that due to several important administrative works, the delay was caused. The right of appeal would not be defeated by mentioning delay much less long delay. Each and every litigant should be given an opportunity in deciding the litigation on merits in appeals. It is held by the Hon'ble Supreme Court in various cases that in view of the importance of questions of law involved, the delay is to be condoned subject to the payment of exemplary cost. Therefore, this Court is of the opinion that the petitioners have prima facie in raising question of law in the Second



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Appeal and at the same the inconvenience caused to the respondent has to be compensated with exemplary manner. The petitioners are also ready to pay exemplary cost. Considering the above facts and circumstances, the delay is to be condoned by imposing certain condition to meet out the inconvenience caused to the respondent.

9. In the result, this Civil Miscellaneous Petition is allowed on condition that the petitioners shall pay an exemplary cost of Rs.50,000/- (Rupees Fifty Thousand only) to the respondent within a period of four weeks from the date of receipt of a copy of this order, failing which this Civil Miscellaneous Petition stands automatically dismissed without any further reference to this Court.

10. On such payment being made within the stipulated time, the Registry is directed to number the Second Appeal, if it is otherwise in order and list it for admission in the usual course.

sd/-
18/10/2023

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/10/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

VSD
TO
1 THE ADDITIONAL SUBORDINATE JUDGE,
KUMBAKONAM.



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2 THE PRINCIPAL DISTRICT MUNSIF,
KUMBAKONAM.

3 THE DISTRICT COLLECTOR,
STATE OF TAMILNADU
OFFICE OF THE DISTRICT COLLECTOR, THANJAVUR DISTRICT,
THANJAVUR .

4 REVENUE DIVISIONAL OFFICER
KUMBAKONAM.

5 TASILDAR
KUMBAKONAM.

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.

+1 CC to M/s.G.GOMATHI SANKAR, Advocate (SR-15395[I] dated 18/10/2023)

+1 CC to M/s.THE SPECIAL GOVERNMENT PLEADER (SR-15488[I] dated
19/10/2023)

ORDER
IN
CMP(MD) No.12958 of 2022
IN
SA(MD)SR.No.53492 of 2022
Date :18/10/2023

SA/VRS/SAR. /25.10.2023/9P/10C

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