



S.A.(MD)No.SR35894 of 2005

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.04.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

C.M.P.(MD)No.4120 of 2023
in
S.A.(MD)No.SR35894 of 2005
& S.A.(MD)No.SR35894 of 2005

The State of Tamil Nadu,
Rep. by its District Collector,
Kanyakumari District at Nagercoil.

... Appellant

/Vs./

1.N.Ganesan (Died)

2.G.Rajesh

... Respondents

(R2 is brought on record as the legal heir of the deceased first respondent as per order dated 02.11.2018 in C.M.P.(MD)No.3948 to 3950 of 2017.)

PRAYER in C.M.P.(MD)No.4120 of 2023: Petition filed under Section 5 of the Limitation Act, to condone the delay of 480 days in filing the Second Appeal.

PRAYER in S.A.(MD)No.SR35894 of 2005: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and



S.A.(MD)No.SR35894 of 2005

decree passed in A.S.No.29 of 2003, on the file of the Principal Sub Court, Nagercoil dated 05.03.2004, confirming the judgment and decree passed in O.S.No.414 of 1991 on the file of the Additional Munsif Court, Nagercoil, dated 27.06.2002.

For Appellant : Mrs.J.Jeyapriya

Government Advocate

For Respondents : Mr.G.Mohan Kumar (R2)

JUDGMENT

This Civil Miscellaneous Petition has been filed by the State, seeking to condone the delay of 480 days in filing the Second Appeal. The parties are described as per their litigative status in the suit.

2. The plaintiff is the State, who had filed a suit for recovery of a sum of Rs.14,100/- before the Additional District Court, Nagercoil, together with interest in respect of the trees alleged to have been cut by the defendant illegally. The said suit was dismissed by the trial Court on the ground that the suit is barred by limitation. Aggrieved by the same,



S.A.(MD)No.SR35894 of 2005

the plaintiff filed an appeal before the Principal Sub Court, Nagercoil in A.S.No.29 of 2003. The lower appellate Court also dismissed the first appeal on 05.03.2004 confirming the judgment and decree passed by the trial Court in O.S.No.414 of 1991. Aggrieved by the concurrent findings of the Courts below, the plaintiff has filed this Second Appeal.

3. In paragraph No.2 of the affidavit filed in support of this civil miscellaneous petition, the only reason given by the plaintiff is that since coastal areas of Kanyakumari District were badly affected by Tsunami and most of the revenue officials were fully engaged in Tsunami relief acts, the plaintiff could not file the appeal on time. The delay, that is sought to be condoned is an inordinate delay of 480 days. No sufficient reasons have been given by the plaintiff for condoning such an inordinate delay and further no documentary evidence is also produced to substantiate the reasons for the delay.

4. This Court also takes note of the fact that the suit has been filed by the plaintiff against the defendant only for recovery of a sum of Rs. 14,100/- together with interest on the allegation that the defendant had



S.A.(MD)No.SR35894 of 2005

cut trees illegally. Both the Courts below have concurrently held that the suit is barred by limitation and the plaintiff is not entitled for the suit relief. The suit is of the year 1991. No useful purpose will be served, if this civil miscellaneous petition is entertained now.

5. Apart from the plaintiff having not given convincing reasons for condoning the inordinate delay of 480 days in filing this second appeal, this Court has given due consideration to the fact that the suit is of the year 1991 and the said suit was filed only for recovery of a meagre sum of Rs.14,100/-, which has also been concurrently rejected by the Courts below on the ground of limitation. Hence, this Court does not deem it fit to entertain this civil miscellaneous petition. Accordingly, there is no merit in this Civil Miscellaneous Petition and the same is dismissed. Consequently, the Second Appeal is also dismissed in the SR stage itself. There shall be no order as to costs.

10.04.2023

Index : Yes / No
NCC : Yes / No
Sm



S.A.(MD)No.SR35894 of 2005

WEB COPY

TO:

- 1.The Principal Sub Court, Nagercoil.
- 2.The Additional Munsif Court, Nagercoil.
- 3.The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD)No.SR35894 of 2005

ABDUL QUDDHOSE, J.

Sm

Judgment made in
C.M.P.(MD)No.4120 of 2023
in
S.A.(MD)No.SR35894 of 2005
& S.A.(MD)No.SR35894 of 2005

Dated:
10.04.2023