



WEB COPY



C.M.P. No. 16018 of 2023
in S.A.SR.No.30749 of 2023

C.M.P. No. 16018 of 2023
in
S.A.SR.No.30749 of 2023

T.V. THAMILSELVI, J.

This Civil Miscellaneous Petition has been filed seeking to condone the delay of 2105 days in filing the above Second Appeal against the judgment and decree dated 27.02.2017 passed in A.S.No.92 of 2013, on the file of Subordinate Judge, Poonamallee confirming the judgment and decree passed in O.S.No.33 of 1995 dated 12.03.2012 on the file of Principal District Munsif, Poonamallee.

2. The petitioners, who are defendants 2, 5 to 8 in the suit in O.S.No.33 of 1995, which was filed by respondents/plaintiffs 1 to 7 claiming the relief of partition and separate possession of their half share in the suit property. The said suit was contested by the 2nd defendant as well as defendants 5 to 8 by filing their written statement. During the pendency of the proceedings, the 1st defendant Jayaraman died and other defendants have contested the suit. On considering the facts and evidence on record,



C.M.P. No. 16018 of 2023
in S.A.SR.No.30749 of 2023

WEB COPY

the trial court held that the properties are joint family properties and the plea of ouster and adverse possession as claimed by the 2nd defendant was not accepted. Accordingly, the suit was decreed by granting half share to the plaintiffs. Against which, the appeal in A.S.No. 92 of 2013 was filed by this petitioners/defendants 2, 5 to 8 and the first appellate judge independently analysed the facts and evidence on record and finally concludes that the suit properties are ancestral properties and the same was also denied by D.W.1 in her cross-examination. Moreover, the oral partition as well as adverse possession and other family arrangement was not proved by the defendants. Accordingly, the first appellate judge confirmed the findings of trial judge and dismissed the appeal on 27.02.2017. Thereafter, challenging the said findings, the petitioners preferred the Second Appeal on 19.07.2023 in S.A.SR.No. 30749 of 2023 along with this petition to condone the delay of 2105 days in filing the appeal with a reason stating that they were under the bonafide impression, the second appeal was filed by the trial court counsel. Furthermore, though the certified copy of judgment and decree passed in the first appeal was made ready on 12.06.2017, the trial court counsel has not handed over the same to him. Hence, there is a delay of 2105 days arose and he filed the present petition



C.M.P. No. 16018 of 2023
in S.A.SR.No.30749 of 2023

WEB COPY

to condone the delay. Further, they would also contend that during the final decree proceedings, only when the advocate commissioner visited the property, they came to know that the Second Appeal has not been filed. So, immediately, they have taken steps and filed this second appeal, however, there is a delay of 2105 days in filing the Second Appeal. Hence, they have filed a petition to condone the delay.

3. The learned counsel for respondents raised strong objections stating that in order to drag on the proceedings, the petitioners have filed this petition without any valid reason. In fact, the first appeal was dismissed on 27.02.2017. Immediately they have obtained the judgment and decree. However, after the disposal of original suit, they have filed an application in I.A.No. 1420 of 2012 to initiate final decree proceedings. In the meanwhile, the petitioners/defendants filed the first appeal in A.S.No.92 of 2013 before the Sub-Court, Poonamallee and the said appeal was dismissed of on 27.02.2017. Thereafter, the Commissioner was appointed and he visited the property, with the help of Surveyor, the property was measured and he had submitted a report before the trial court. Accordingly, the learned trial judge passed a final decree by dividing both item Nos.1 and 2 equally based



C.M.P. No. 16018 of 2023
in S.A.SR.No.30749 of 2023

WEB COPY

on the Commissioner report and allotted half share to the plaintiffs/respondents 1 to 7 herein on 13.06.2022 and in that proceedings, the petitioners/defendants have also represented through their counsel. After passing of final decree, this Second Appeal was filed. The learned counsel would also submit that they have already aware of proceedings and knowledge about the dismissal of appeal, but they came forward by filing this petition to condone the delay of 2105 days with flimsy reasons. So, the reasons stated by them is false one. Hence, he prayed to dismiss this petition.

4. On perusal of records, the present petition seeking to condone the delay of 2105 days in filing the second appeal was filed by the petitioner/appellant on 19.07.2023. According to them, the trial court counsel has not properly informed about the proceedings and they were under bonafide impression that second appeal was filed after the dismissal of appeal suit. So, on seeing the facts, already the final decree proceedings initiated by the plaintiffs before the trial court and after the dismissal of first appeal, an advocate commissioner was appointed and he visited the property, with the help of surveyor property was measured and submitted a



C.M.P. No. 16018 of 2023
in S.A.SR.No.30749 of 2023

report. Based on that, final decree was also passed by the trial court on 13.06.2022.

5. Furthermore, on perusal of final decree order dated 13.06.2022, it clearly reveals that one M.A.Raaja Sekara Pandian was appeared on behalf of these petitioners before final decree proceedings. Therefore the final decree proceedings was contested by them through their counsel appeared on behalf of these petitioners. On hearing both sides, trial judge had passed a final decree on 13.06.2022. So, they were very well knew about the passing of final decree, but without disclosing all those facts, now they have filed the present petition as if they have not obtained certified copy of judgment. So, there is a delay of 2105 days arose. The reasons stated by them is totally false one. Already final decree was passed, in which they have already participated through their counsel, but suppressing of all the facts, now they have filed this petition nearly about 7 years later and preferred the Second Appeal and they have stated that they taken steps to prefer second appeal as such it is clear abuse of process of law. So, the reasons stated by the petitioners to condone the delay is false one with suppression of the material facts and they were aware of proceedings



C.M.P. No. 16018 of 2023
in S.A.SR.No.30749 of 2023

WEB COPY

already initiated by the respondents to get a final decree. All the court proceedings were known to them and the same was proved through the final decree proceedings by the respondents/plaintiffs. Therefore, the reasons assigned by them is false one and not acceptable one. Accordingly, this petition is dismissed.

20.09.2024

rpp



WEB COPY



C.M.P. No. 16018 of 2023
in S.A.SR.No.30749 of 2023

T.V.THAMILSELVI, J.

rpp

C.M.P.No. 16018 of 2023
in
S.A.SR.. No. 30749 of 2023

20.09.2024