



C.M.P. No. 15712 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.P. No. 15712 of 2023

in

S.A. Sr. No. 146593 of 2022

C.M.P. No. 15712 of 2023:

Ananda Shanthini Rengarajulu

...Petitioner

Vs.

Yasoda Ammal (Died)

1.Bhuvaneswari

2.Kowsalya @ Muniammal

3.Susila @ Ramani

4.Sethuraman @ Thanthri

Munisamy @ Chandran (Died)

Neela @ Muniammal (Died)

...Respondents



C.M.P. No. 15712 of 2023

(Cause Title Accepted Vide order of Court dated 12.06.2023 made in C.M.P.No.5059 of 2023 in S.A.Sr.No.146593 of 2022)

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(Mr.Kumaravel is recognised as Power Agent of the Appellant vide order of Court dated 14.03.2023 made in C.M.P.No.5060 of 2023 in S.A.Sr.No.146593 of 2022).

Prayer: Petition is filed to condone the delay of 8216 days in filing the Second Appeal.

S.A. Sr. No. 146593 of 2022:

Ananda Shanthini Rengarajulu

...Petitioner

Vs.

Yasoda Ammal (Died)

1.Bhuvaneswari

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3.Susila @ Ramani

4.Sethuraman @ Thanthri

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C.M.P. No. 15712 of 2023

(Cause Title Accepted Vide order of Court dated 12.06.2023 made in C.M.P.No.5059 of 2023 in S.A.Sr.No.146593 of 2022)

(Mr.Kumaravel is recognised as Power Agent of the Appellant vide order of Court dated 14.03.2023 made in C.M.P.No.5060 of 2023 in S.A.Sr.No.146593 of 2022).

Prayer: Appeal filed under Section 100 of CPC against the Judgement and Decree passed in A.S.No.180 of 1999 dated 27.03.2000 on the file of III Additional District Judge, Pondicherry confirming the finding passed in O.S.No.1466 of 1986 dated 30.10.1998 on the file of the Principal District Munsif, Pondicherry.

For Petitioner : Mrs. A.L.Ganthimathi
Senior Counsel
For Mr. C.T.Murugappan.

For Respondents : No Appearance
1 to 3

For Respondent 4: Mr. T.M.Naveen.



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ORDER

The third party to the proceedings has filed the Second Appeal nearly 22 years after the decree had been passed by the III Additional District Judge, Puducherry in A.S.No.180 of 1999.

2. The appellant / petitioner would submit that she had come to learn about the decree only when she was served with the notice in the execution proceedings in E.P.No.60 of 2004. It is her contention that she is a bonafide purchaser of the suit schedule properties from respondents 1 to 4. Though in paragraph no.3 of the affidavit filed in support of the petition, the petitioner / appellant would submit that she was unaware of the proceedings until the service of notice in E.P.No.60 of 2004, later on she would submit that she had come to know about the Judgement in the First Appeal only on 12.07.2008 when she was served with notice in E.A.No.29 of 2008.



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3. Thereafter, the petitioner claimed to have filed an application before the Principal District Munsif, Puducherry in I.A.No.1509 of 2007 under Section 47 of the CPC. However, the said application was dismissed, against which the petitioner has preferred a revision in C.R.P.No.839 of 2020 on the file of this Court and there has been a stay of further proceedings in execution. The Second Appeal has come to be filed thereafter.

4. The reasons that has been given for the delay is set out in paragraph no.5 of the affidavit filed in support of the petition, in which the petitioner would submit that as soon as she had received the notice in E.A.No.29 of 2008, she had engaged the service of one Mr. A.Aladi Mahendran, to appear on her behalf and had returned to France. It was only recently that she had come to know that her counsel had died 5 to 7 years ago. This information was not intimated to her.



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5. The petitioner would contend that she was under an impression that the Second Appeal has been filed in time. Thereafter, she has filed a copy application on 30.07.2009 for certified copies of the plaint, written statement, exhibits and judgement and decree and the same was being returned continuously from 14.10.2009 till 21.11.2009 and therefore she has no other option except to proceed / contest the case without the requisite certified copies of the documents.

6. Thereafter, it is her contention that COVID lockdown had set in place and in the first week of March, she was under bed rest for two months and it was only in the month of November 2022 that she had fully recouped her health. Therefore, the delay has occurred.

7. Mrs.A.L.Ganthimathi, learned senior counsel appearing for Mr. C.T.Murugan, counsel for the petitioner, would submit that the respondent / plaintiff had lost all the earlier rounds and it is only in the impugned Judgement that a decree has been passed and that too an ex



parte decree which has been obtained after issuing notice through substituted service. She would further argue that the respondent / plaintiff who was aware about the sale of the property in favour of the predecessor in title of the petitioner has not taken steps to implead them and has managed to obtain an order in his favour clandestinely. Therefore, the very decree is invalid and therefore the delay ought to be condoned.

8. Per contra, the learned counsel appearing on behalf of the 4th respondent would submit that the petitioner is a pendente lite purchaser and not a bonafide purchaser for value. The property has been alienated with a view to remove it out of the reach of the plaintiff. He would submit that the petitioner's vendor, Tinagarin Peroumal, had obtained the property under a registered gift settlement deed dated 03.12.1996 executed by the defendants in the suit O.S.No.1466 of 1986 and the said Tinagarin Peroumal had sold the property to the petitioner under a registered sale deed dated 27.07.2007. He would submit that this sale deed has been executed during the pendency of the appeal in



A.S.No.180 of 1999, which is the subject matter of the present appeal.

Neither the vendor of the petitioner nor the defendants had brought to the notice of the Court about the settlement deed and had not taken steps to implead the petitioner as a party to the proceedings. The appeal was allowed on 27.03.2000.

9. Thereafter, the plaintiff / 1st respondent had filed an execution proceedings in E.P.No.60 of 2004. The petitioner has filed a Section 47 application in the year 2017. Even then, the petitioner has not deemed it fit to file the Second Appeal. Thereafter, the application was dismissed in the year 2000 and Civil Revision Petition has been filed in the year 2000. Even then the petitioner has not taken steps to file the Second Appeal.

10. The learned counsel would submit that the delay is enormous and that apart he would submit that the petitioner owns the adjacent property and they have kept the suit property in a dilapidated and neglected state which clearly shows that they are very much aware



about the decree in favour of the plaintiff. The petitioner who has purchased the property in the year 2007 has not taken any steps to develop the property which by itself would speak about the volume about their knowledge about the proceedings.

11. Heard the learned counsels and perused the records.

12. Considering the enormous delay it is necessary for this Court to consider the merits of the case so as to ensure that the parties are not deprived of a legal right that they have accrued. The records would indicate that the suit O.S.No.1466 of 1986 was dismissed by the Principal District Munsif, Puducherry after remand on 30.10.1998. Even as per the records filed by the petitioner, the defendants to the suit had executed a settlement deed in favour of the vendor of the petitioner on 30.10.1998. Therefore, even during the pendency of the suit, the settlement had taken place and the same was not been brought to the notice of the Court and neither have the defendants or the settlee taken steps to have themselves impleaded. The suit was dismissed against



which an appeal in A.S.No.180 of 1999 had been filed. The defendants / respondents could not be served at the given address and thereafter substituted service was effected and the appeal came to be allowed on 27.03.2000. Seven years thereafter the petitioner has purchased the property. Execution Proceedings had been initiated even as early as in the year 2004 much prior to the petitioner herein having purchased the property. Even according to the petitioner in the affidavit filed in support of the application for condoning the delay she has stated as follows:

“3. I submit that the Appellant is a permanent resident of France and as such she was unaware of proceedings until the service of notice in Execution proceedings i.e. E.P.No.60 of 2004. It is pertinent to state that the Appellant is that bonafide purchaser of the subject property and the Respondents 1 to 4 to defeat the righteous cause of the Appellant had lodged and conducted the vexatious first appeal without impleading the necessary parties and without issuing notice to proper



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and necessary parties.

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13. Thereafter in paragraph no.4 of the affidavit, the petitioner would submit that she came to know about the Judgement in First Appeal only after service of notice in E.A.No.29 of 2008 in E.P.No.60 of 2004. The said statement runs contrary to the earlier statement made in paragraph no.3.

14. It is seen that even after she was served with notice in the year 2008, the petitioner has not chosen to file Second Appeal, on the contrary the petitioner has filed an application under Section 47 in I.A.No.1509 of 2017, 9 years later. Even at that point in time, the petitioner has not filed the Second Appeal. Thereafter, the Section 47 application filed by them was dismissed by orders dated 16.12.2019. Even thereafter the petitioner has not filed Second Appeal. Instead the petitioner has chosen to challenge the order passed in I.A.No.1509 of 2017 by filing C.R.P.No.839 of 2020 and had obtained stay of all further proceedings in E.P.No.60 of 2004. It is only in December 2022



that appeal has come to be filed. There is no explanation as to why the petitioner has not taken steps to file the Second Appeal on any of the earlier dates. The appellant has consciously proceeded to file a Section 47 petition and not a Second Appeal. Now, having failed in the said proceedings the petitioner has taken steps to file the instant appeal. The enormous delay has not been properly explained.

15. Further, despite being aware about the proceedings, the predecessor in title of the petitioner and the petitioner have not taken steps to get themselves impleaded in the proceedings particularly when the settlement deed in favour of the vendor of the petitioner has been executed when the suit O.S.No.1466 of 1986 was pending and Judgement and Decree had not been pronounced in the matter.

16. Therefore, considering the fact that the delay is huge and the petitioner despite having ample opportunity to file an the appeal admittedly from the year 2004 has not taken steps in this regard, the petitioner is not entitled to the indulgence of the Court. Further, the



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rights of the 1st respondent / plaintiff which has been declared in the year 2000 is unable to enjoy the fruits of the decree. The petition is therefore dismissed and the Second Appeal is rejected at the SR stage itself. No costs.

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Index : Yes/No
Internet : Yes/No
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P.T. ASHA, J,

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