



CMPNo.12374 of 2002

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 29/07/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

CMP No.12374 of 2002

in

SA.No.SR.80680 of 1997

1.Chinnu Gounder (Died)
2.S.Subramani
3.S.Rajeswari Ariyaperumal
4.Shanthi
5.Subulakshmi
6.N.Navaneetha Krishnan
7.N.Gokula Krishnan : Petitioners/Appellants
(Petitioners 2 to 7
brought on as Lrs of the
deceased sole petitioner,
vide court order, dated 4/04/2016
made in MP(MD)Nos.1 to 3 of 2012
in CMP No.12374 of 2022 in SA No.
SR80680 of 1997)

Vs.

1.Paul (Died)
2.Alagammal
3.Solai Alagan
4.Murugan
5.Poosari Alagan @ Solai Alagan
6.Venkatachalam @ Chinna Thambi
7.Alagan
8.Perumal
9.A.T.Ponnusamy
10.A.T.Kannan
11.Alaga Gounder
12.Savariammal (Died)
13.Selvarathinam
14.Christhudass
15.Sutharsan Duraikannu : Respondents/Respondents
(R12 to R15 are brought
on record as Lrs of the
deceased 1st respondent,
vide court order, dated 18/11/2019
made in CMP(MD)No.4641 of 2016 in
SA No.SR80680 of 1997)



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PRAYER:- Civil Miscellaneous Petition is filed under section 5 of the Limitation Act, to condone the delay of 641 days in filing the petition to set aside the order of dismissal, dated 09/06/1999 in the above said second appeal.

For Petitioners : Mr.P.Thirumahilmaran

For Respondents : No appearance

O R D E R

This civil miscellaneous petition seeking condonation of delay of 641 days in filing the petition to set aside the order of dismissal, dated 09/06/1999 in the above said second appeal.

2.The plaint averments in in brief:-

The first petitioner filed Second Appeal SR.No.80680 of 1997 on 06/11/1997. Along with the Appeal Memorandum, he produced the copy of the decree passed by the Appellate Court namely Subordinate Judge in AS No.350 of 1995. The Appeal Memorandum was returned by the Registry stating that 11th defendant's name is not mentioned in the decree.

3.The matter was posted before this Court on 09/06/1999 for compliance. 10 days time was granted by



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this court to comply the return. No separate order was passed, dismissing the second appeal at the SR stage. Because of the non-compliance, it has deemed to have been dismissed.

5.Steps were taken by the petitioners to get the decree corrected. Later, there was bifurcation of Magistrate Court, the records of the trial court transmitted to the Sub Court, Karur, from the Sub Court, Kulithalai wrongly. Because of the mistake committed by the office of the Sub Court, Kulithalai, there was a delay in getting the decree corrected. On 12/03/2001, he got the corrected decree copy. After engagement of another counsel, he took steps. So, there is a delay of 641 days in presenting the petition to set aside the order of default. Hence, this petition.

6.Even though, the respondents served, none appear. So, their names were printed in the cause list.

7.The learned counsel appearing for the petitioners would reiterate the same fact narrated in the petition.

8.But perusal of the records shows that the suit is of the year 1987. Judgment was passed on 29/04/1994. The



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appeal was preferred in AS No.350 of 1995. It was disposed of on 16/07/1997. The first petitioner is the 10th defendant in the suit. The suit is one for partition and separate possession of the plaintiffs share in that property. After full contest, as mentioned above, it was decreed as prayed for on 29/04/1994. It was partly allowed. The judgment decree of the trial court was modified. The suit in respect of the second item was dismissed. But in respect of other items, the decree passed by the trial court was confirmed.

9.Against which, second appeal SR No.80680 of 1997 was filed as narrated in the averments.

10.A suit for partition was dragged on for several decades. 37 years gone. Now the petitioners wants to prosecute the appeal to its logical end. They ought to have taken proper steps within the time granted by this court. It was not done by the petitioners within the time stipulated. So, SR was rejected automatically.

11.Now in the grounds, it is stated that there is some delay on the part of the petitioners to get the decree corrected by the trial court. Even after, it is admitted by the petitioners themselves that it was made



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ready and delivered to him on 12/03/2001. Even after, getting the corrected order, the petition was not filed in time. It was presented only on 10th April 2001. It was not properly prosecuted.

12.Perusal of the docket shows that it was returned due to some defects. Again, there was a delay in rectifying the mistake. It was also done, by order, dated 20/06/2002. So, this shows that the petitioners are not interested in prosecuting the matter diligently. Even notice was properly taken in this petition also, subsequently, it was listed on 30/08/2017 due to non-payment of batta and non compliance, etc. Time was granted to comply the condition upto 14/09/2017. Again, there was a default. Batta was not paid and steps were not taken to bring on record the legal heirs of the deceased R1, R2, R7 to R11. Now, after a long gap only, the legal heirs applications were filed. This shows that the petitioners are not interested in prosecuting the matter properly and within reasonable time.

13.As mentioned above, the suit is for partition filed in 1987. The petitioners want to drag on the matter endlessly. The reason assigned by the petitioners in the petition is not at all acceptable and genuine also.



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14. So, this Civil Miscellaneous Petition stands dismissed.

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Index: Yes/No
Internet: Yes/No
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To,

1. The Sub Court, Karur.
2. The Sub Court, Kulithalai.
3. The District Munsif Court,
Manaparai.
4. The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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