



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:05.08.2026

Pronounced on:21.08.2026

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THE HON'BLE MR.JUSTICE P.B. BALAJI**CRP. No.3742 of 2026
and CMP. No.16242 of 2026**1.Divya
2.Deepa

..Petitioners

Vs

Babu Reddy

..Respondent

PRAYER: This Civil Revision Petition has been filed under Section 115 of CPC, to set aside the fair and decretal order dated 25.02.2026 passed in I.A. No.1 of 2024 in O.S. No.368 of 2017 by the Subordinate Judge, Denkanikottai, Krishnagiri.

For Petitioner(s): Mr.K.Sathyabal

For Respondent(s): Mr.A.Ramaswamy

ORDER

The defendants 2 and 3, aggrieved by the order in I.A. No.1 of 2024 in O.S. No.368 of 2017, are the revision petitioners.



2. I have heard Mr.K.Sathyabal, learned counsel for the petitioners and Mr.A.Ramaswamy, learned counsel for the respondent.

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3. The learned counsel for the revision petitioner would attack the findings of the learned Sub Judge, Denkanikottai, contending that the Trial Court failed to see that the petitioners had satisfactorily explained the delay in not seeking to set aside the exparte decree. He would further state that though the delay application sought to be condoned is 792 days in filing the application to set aside the exparte decree, the petitioners had categorically made out a case that they were not aware of the exparte decree and in fact, had filed the application within 30 days from the date of knowledge of the same on 26.02.2021 and that the Section 5 Application was filed only by way of abundant action to avoid any technical objections taken by the petitioner.

4. The learned counsel for the petitioners states that suit being one for specific performance and the decree, granted exparte would virtually depriving the petitioners of their valuable immovable property, the petitioners should be given a fair opportunity to contest the suit. The learned counsel would further state that one of the petitioner was in fact a minor and Court being a custodian of minor's interest ought to have favourably considered the condone delay



application thereby, protecting the valuable interest of the minor in immovable property.

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5. Per contra, Mr.A.Ramaswamy, learned counsel for the respondent would submit that though in the agreement of sale, the mother represented two of her minor daughters as vendors, even on the date of agreement, the minors were aged 17 and 16 years viz., on 05.11.2015 and when the suit was filed since they had attained majority, the defendants were all shown as majors. He would further state that no objections taken by both the petitioners as well as their mother, who represented them, on the ground that the suit was filed against the minor without appointment of a guardian. He would further state that in any event, the petitioners have not shown sufficient cause explaining the delay of 792 days and the Trial Court has rightly dismissed the Application and the same does not warrant interference in revision.

6. I have carefully considered the submissions advanced by the learned counsel on either side.

7. During the course of submissions of the learned counsel, much was argued with regard to the minority of one of the petitioners herein. According



to the learned counsel for the petitioners, on the date of filing of the suit, one of the petitioners, the younger sister was still a minor but however she was shown as major, suppressing the factum of she continuing to be a minor on the date of institution of suit. It is therefore the contention of the learned counsel for the petitioners that all is not well, the manner in which the respondent has proceeded to obtain an ex parte decree and therefore, an opportunity should be given to the daughters/petitioners herein to contest the suit for specific performance on merits.

8. In view of the arguments revolving around the minority of one of the petitioners on the date of institution of the suit. I called for the original records of the Subordinate Judge, Denkanikottai. On perusal of the same, I find that vakalat has been filed on behalf of both the petitioners and they have signed the vakalats individually. It is not their case that the younger sister was still a minor and therefore, she was being represented by her mother or even her elder sister, who had by then become a major. The learned Counsel entered appearance on behalf of both the petitioners in the suit. No objection was taken to the filing of the suit on the ground that the younger sister continued to be a minor and that she has been erroneously shown as major in the cause title (short as well as long cause title). Therefore, I do not see this issue actually looming large in order to decide the Section 5 Application. It is sufficient to record the fact that though



admittedly, the younger sister was a minor on the date of the filing of the suit, it was never objected to or brought to the notice of the Court and on the contrary, the younger sister herself has signed the vakalat and engaged a Counsel. In such circumstances, the voluntary action on the side of the petitioners themselves, deny them an opportunity to now contend that the suit was filed against the minor and therefore, the exparte decree has to be necessarily set aside.

9. The only question that remains to be considered is as to whether the delay of 792 days has been sufficiently and satisfactorily explained by the petitioners.

10. Admittedly, all the defendants viz., the mother and the revision petitioners herein were set exparte on 30.10.2018 and an exparte decree came to be passed on 28.11.2018. On the date of the decree, the second petitioner also attained the age of majority. It is alleged by the petitioners that they came to know about the exparte decree only on 29.01.2021 and that within 30 days thereafter, they have filed the application to set aside the exparte along with a formal condone delay application seeking condonation of 792 days. The said application was stoutly resisted by the respondent/plaintiff and on enquiry, the



Trial Court dismissed the Application, finding that no sufficient cause has been made out.

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11. The Trial Court found that even in the suit, the petitioners had entered appearance by engaging a Counsel by name, C.Jayshankar and since no written statement came to be filed by the petitioners and their mother, they were set exparte and subsequently, the suit was decreed against the petitioners and their mother. Therefore, the Trial Court found that the petitioners have approached the Court with a false case as if they came to know about the exparte decree only after receipt of notice in the Execution Proceedings. The Trial Court, from the records, found that the petitioners were served with summons, even prior to the first hearing of the suit on 11.12.2017 and the petitioners including their mother had engaged the same Counsel and entered appearance on 03.01.2018 itself. The Court has also found that subsequently no steps have been taken by the petitioners to defend the suit and in such circumstances, the costs shown by the petitioners to condone delay of 792 days is neither sufficient nor based on facts and proceeded to dismiss the application.

12. Much has been argued as already deliberated hereinabove with regard to the minority of the younger sister, viz., the third defendant. No doubt,



in terms of the document exhibited before the Trial Court in the suit as also in the revision, on the date of institution of the suit, the third petitioner was a minor. However, when she was reflected as a major and summons were served, the petitioners have received summons, signed vakalats along with their mother and engaged the very same Counsel. Thereafter, for not following up the matter and not filing of written statement, the suit has been decreed exparte. The petitioners therefore had knowledge of the pendency of the filing of the suit right from day one. However, false contentions have been taken in the Section 5 Application as if, they were never aware of the exparte decree and came to know about it only when they were served summons in the Execution Petition.

13. Moreover, though one of the petitioners was a minor on the date of the institution of the suit, the suit was decreed on 28.11.2018. The minor, even after attaining majority has not chosen to challenge the decree or avoid the transaction viz., the sale transaction within a period of three (3) years. The minor daughter cannot feign ignorance of the proceedings, since she has engaged a Counsel and even signed a vakalat in her individual capacity. Therefore, it is not open to the petitioners to take advantage of their own wrong to project a case as if fraud has been played and the decree should be set aside. In any event, nothing prevented the mother and the other petitioners to have taken diligent steps to set aside the exparte decree, especially when they had



engaged a Counsel together (all three of them) to represent that in the suit.

Having done so, they have come up with a false case as if they were never aware of the decree. I can understand that if the mother had alone entered appearance and represented the petitioners and thereafter, do not defend the suit. However, on perusal of the original records, I find that all three defendants including the petitioners herein have signed a vakalat on 03.01.2018 itself and again in the Execution Petition proceedings on 05.12.2019. Therefore, I do not see any just or sufficient cause being made out by the petitioners warranting exercise of discretion under Section 5 of the Limitation Act in their favour. The Trial Court, by a well reasoned order, after dealing with all objections of the petitioners, including the issue of minority of the second petitioner has rightly dismissed, the condone delay application. I do not see any grounds warranting interference in the revision.

14. In fine, this Civil Revision Petition is dismissed. No costs.

Consequently, connected Miscellaneous Petition is also dismissed.

21-08-2026

Index: Yes

Speaking order

Neutral Citation: Yes

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To
The Subordinate Judge,
Denkanikottai, Krishnagiri.

CRP No.3742 of 2





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CRP No.3742 of 2



P.B.BALAJI, J.

RKP

Pre-delivery Order in
CRP. No.3742 of 2026
and CMP. No.16242 of 2026

21-08-2026