



C.M.A.(MD)No.1578 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.02.2026

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A.(MD)No.1578 of 2025

Shridevi,
W/o. Late. Rajviswanathan,
E F 3, Vajra Apartments,
Bye Pass Road,
Madurai - 16.

... Appellant/Petitioner/Plaintiff

Vs.

1. Vijaya,
W/o. Shankaran,
No.40, Rajaji 9th Street,
Thirumangalam,
Madurai.

2. Selvamurugamani,
S/o. Shankaran,
No.40, Rajaji 9th Street,
Thirumangalam,
Madurai.

3. Sugunapriya,
D/o. Shankaran,
No.40, Rajaji 9th Street,
Thirumangalam,
Madurai.

... Respondents/Respondents/Defendants

PRAYER: Civil Miscellaneous Appeal filed under Section 43 Rule 1(c) of CPC, to set aside the fair and decreetal order passed by the IV Additional District Judge, Madurai in I.A.No.2 of 2025 in O.S.No.172 of 2020, dated 04.12.2025.



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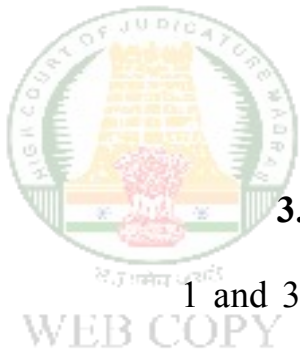
For Appellant : Mr.M.S.Senthil Kumar
for M/s.Sree Kaamaakshi Law Associate
For R2 : Mr.K.Khoushik Nivas
For R1 & R3 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the fair and decreetal order, dated 04.12.2025 passed by the learned IV Additional District Judge, Madurai in I.A.No.2 of 2025 in O.S.No.172 of 2020.

2. The brief facts of the case:

The appellant is the plaintiff in O.S.No.172 of 2020 on the file of the IV Additional District Court, Madurai. The suit was dismissed for default on 28.08.2025. The appellant/plaintiff has filed the petition in I.A.No.2 of 2025 in O.S.No.172 of 2020 under Order 9 Rule 9 of CPC to restore the suit. The respondents/defendants objected for restoration. After hearing both, the Trial Court has dismissed the petition in I.A.No.2 of 2025 in O.S.No.172 of 2020 on 04.12.2025. Aggrieved by the order of the Trial Court, the appellant/plaintiff moved this Court by way of this Civil Miscellaneous Appeal.



3. The second respondent appeared through counsel. The respondents 1 and 3 did not appear in spite of notice served and their names have also been printed in the cause list.

4. Heard both side and perused the records in this Civil Miscellaneous Appeal.

5. The learned counsel appearing for the appellant/plaintiff has argued that the appellant/petitioner filed a suit for partition against the respondents/defendants and the appellant/plaintiff obtained direction from this Court for early disposal of the suit. The appellant/plaintiff filed a proof affidavit on 31.07.2025 and she was cross examined on 13.08.2025. Then, the suit was posted for further evidence to 28.08.2025, on which date the appellant/plaintiff and her counsel were unable to attend the Court, hence, the suit was dismissed for non-prosecution. The trial Court ought to have given sufficient opportunity to the appellant/plaintiff. The trial Court ought to have closed the evidence in case the appellant/plaintiff is not ready. The trial Court ought to have granted further time instead of dismissing the suit for default. The trial Court has not considered the fact that the period for disposal of the suit is granted till 30.12.2025 by the High Court. The appellant/plaintiff is ready to complete the evidences within one month. Moreover, the trial Court



has failed to see that the appellant/plaintiff filed the restoration petition on 02.09.2025 within four days to restore the suit, which was dismissed for default on 28.08.2025.

6. The learned counsel for the second respondent filed a counter and objected that the appellant/petitioner has already left the suit for default on 07.02.2023. After restoration, the appellant/plaintiff has not cooperated for conducting the trial in spite of direction for disposal obtained by her from this Court. The appellant/plaintiff has no valid case, so once again she left the case for dismissed for default. The appellant/plaintiff is in habit of leaving the suit for dismissal for default, then she chooses to file a restoration petition with a view to drag the matter. Therefore, this Civil Miscellaneous Appeal may be dismissed.

7. On hearing both and on perusal of records, it is clear that the appellant/petitioner has filed the suit for partition against the respondents. The appellant/plaintiff admits that the direction for disposal of the suit within 31.12.2025 has been issued by this court in C.R.P(MD)No.432 of 2025. The appellant/plaintiff states that proof affidavit of PW.1 was filed on 31.07.2025, P.W.1 was cross examined 13.08.2025. When the case was posted to 28.08.2025 for the plaintiff's side further evidence, the suit was



dismissed for non-prosecution. It is settled proposition that sufficient opportunity has to be given to litigants to put forth their respective cases for disposal on merits. For non-appearance on single hearing, the trial Court has dismissed the suit for non-prosecution without giving opportunity, which is not sustainable in law.

8. As rightly pointed out by the learned counsel for the appellant/plaintiff, the trial Court ought to have closed the evidence of the plaintiff's side if the appellant/plaintiff and her counsel were not ready for further evidence when the time for disposal of the suit was granted till 31.12.2025. Eventhough the learned respondents' counsel brought to notice about the earlier dismissal for default, the suit is filed for partition, in which all parties are deemed to be plaintiffs. The appellant/plaintiff has filed the petition to restore the suit within 4 days from the date of dismissal for default. Now, the appellant/plaintiff is ready to complete her evidences within one month. The respondents will not be prejudiced in case of restoration, because they have sufficient opportunity to put forth their case. Therefore, this Court is of the opinion that the appellant/plaintiff has to be given an opportunity to conduct her suit. Considering the above facts and circumstances, the delay is to be condoned.



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9. In the result, this Civil Miscellaneous Appeal is allowed.

The fair and decreetal order passed by the learned IV Additional District Judge, Madurai in I.A.No.2 of 2025 in O.S.No.172 of 2020, dated 04.12.2025 is set aside. The learned IV Additional District Judge, Madurai is directed to restore the suit in O.S.No.172 of 2020 and post the matter for further plaintiff's side evidence and dispose of the suit within a period of five months from the date of receipt of a copy of this order after affording sufficient opportunities to both parties. No costs.

20.02.2026

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

Note: Issue Order Copy on 20.02.2026

To

- 1.The IV Additional District Judge,
Madurai
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



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P.VADAMALAI, J.

VSD

Judgment made in
C.M.A.(MD)No.1578 of 2025

20.02.2026