



C.R.P.No.2666 of 2013

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

CORAM

THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

**C.R.P.No.2666 of 2013**

- 1.V.M.Arthanari
- 2.V.M.Thirumurugan
- 3.Nanjammal
- 4.Bakkialakshmi
- 5.Jothi
- 6.Nothimani
- 7.A.Muthuvijayan
- 8.A.Sangeetha
- 9.V.A.Muthuselvan

... Petitioners/Petitioners  
/ Appellants

(Petitioners 6 to 9 brought on record as the legal representatives of the deceased V.M.Arthanari as per the orders of this Court dated 10.07.2023)

Vs.

- 1.V.K.Marappan
- 2.Kannammal
- 3.Punithavathi
- 4.Sakthi
- 5.Manjula
- 6.Chinnathambi
- 7.Sasirajan



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8.Sasi Anand

9.Ellammal

10.V.R.Pari

11.Saroja Devi

12.Manimekalai

13.Senthamarai

14.Shanthi

... Respondents/Respondents  
/Respondents

**Prayer:** Civil Revision Petition filed under Section 115 of the Code of Civil Procedure as against the Fair and Decreetal Order dated 23.04.2013 in I.A.No.482 of 2011 in A.S.No.135 of 2009 on the file of the learned Principal District Judge, Erode.

For Petitioners : Mr.A.V. Arun

For Respondents : Mr.M.Guruprasad  
for R1 to R7  
Mr.Ma.Pa.Thangavel for R10  
No appearance for R9 and R11

### **ORDER**

The defendants 1 to 7, 11 and 12 in O.S.No.74 of 2000 are the petitioners before this Court. O.S.No.74 of 2000 was filed for partition and for separate possession. The plaintiff had claimed that the suit schedule mentioned property was a joint family



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property belonging to the plaintiff and his two brothers, namely, Late.Muthusamy and Late.V.K.Rangasamy. The defendants 1 to 12 are the legal representatives of Late Muthusamy and the defendants 13 to 18 are the legal representatives of Rangasamy.

2.The suit was resisted by the 1st defendant claiming that the property was purchased in the year 1961 from the individual income of Muthusamy and it was not a property which came into existence by virtue of the purchase by joint family of Karuppanna Chettiar. Karuppanna Chettiar is the father of the plaintiff and the grandfather of the defendants 1 to 18. On 30.04.2009, the suit was decreed and a Preliminary decree for partition was granted.

3.Aggrieved by the decree, the defendants 1 to 7 and 11 and 12 preferred an appeal in A.S.No.135 of 2009 before the learned Principal District Judge, Erode. The appeal was taken in the list



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and heard on 11.02.2010. On that date, there was no representation on behalf of the appellants and therefore, the appeal was dismissed for default. Since the appeal was dismissed for default, the plaintiff proceeded further and filed an application for final decree.

4.It was only on receipt of final decree proceedings, the petition already filed to condone the delay in representation/refiling the petition to restore the appeal was re-presented. There occasioned a delay of 505 days and it was not condoned by the Lower Appellate Court. The reason for non-condonation is that the party had taken the return of the application to restore the appeal, he did not re-present the same. The excuse given was that he had misplaced the same in his house.

5.Normally, the petition to restore on being returned would



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not be taken away by the party but would be taken by the counsel for further prosecution. The very fact that the party had taken away the papers of the Lawyer and retained the papers himself shows that he wanted to drag on the matter by one way or other and thereby prevent the plaintiff from enjoying the fruits of the decree.

6.No doubt, the condonation of delay is a matter between the Court and the party. However, the plaintiff having initiated final decree proceedings and having served notice on the defendants 1 to 7 on the same, it is only then that the said respondents moved an application to restore the application filed by them. The very fact that the appellants pleaded that they had taken the papers away from the Lawyer and kept the papers themselves sounds not only improbable but also highly artificial. The only one conclusion I can arrive at is that the party was not interested in



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prosecuting the appeal.

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Therefore, the view of the learned First Appellate Judge in I.A.No.482 of 2011 in A.S.No.135 of 2009 dated 23.04.2013 does not require any interference. The Civil Revision Petition is dismissed.

No Costs.

**10.07.2023**

Index : Yes/No  
Speaking Order : Yes/No  
Neutral Citation Case : Yes/No  
mps

To

The Principal District Judge,  
Erode.



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**V. LAKSHMINARAYANAN, J.**

mps

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