



CRP No.579 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.09.2025

DELIVERED ON :26.09.2025

CORAM:

THE HON'BLE MR. JUSTICE P.B. BALAJI

C.R.P.No.579 of 2021 and CMP No.4908 of 2021

- 1.Nagarajan
- 2.Tulasi
- 3.Ezhumalai
- 4.Kannan
- 5.Radha
- 6.Saraswathy

.... Petitioners

Versus

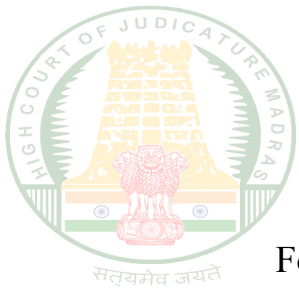
- 1.T.Venkatachalapathy
 - 2.V.Seenuvasan
 - 3.Jubli Sundaram (died)
 - 4.J.Mary
 - 5.J.Raja
 - 6.J.Doss
 - 7.J.Symen Thambidurai
 - 8.Elizabeth Swarnalatha
- (Respondents 4 to 8 are brought on record
as LR's of the deceased .3 Jubli Sundaram
vide court order dated 03.06.2025 made
in CMP Nos.13577 and 13579 of 2022)

... Respondents

Revision filed under Section 115 of Civil Procedure Code against the order made in I.A.No.73 of 2019 in O.S.No.382 of 2012 dated 03.01.2020 passed by Principal District Munsif, Kallakurichi.

For Petitioners

: Mr.N.Senthil Kumar



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For Respondents

: Mr.B.K.Girish
For R.1 and R.2
Mr.D.Murugan
For R.4 to R.8
R.3 – Died – Steps taken

ORDER

The revision petitioners, who are plaintiffs in O.S.No.382 of 2012, filed an application in I.A.No.73 of 2019 for condoning the delay of 1343 days under Section 5 of the Limitation Act, in order to file an application to restore the suit to file.

2. Heard Mr.N.Senthil Kumar, learned counsel for the revision petitioners and Mr.B.K.Girish, learned counsel for the respondents 1 and 2.

3. Learned counsel for the revision petitioners would state that the petitioners had filed a suit in O.S.No.382 of 2012 for partition and the suit came to dismissed for non-prosecution on 05.11.2014 and an application in I.A.No.73 of 2019 was filed along with an application to condone the delay seeking to restore the suit to file on 28.11.2015.

4. It is the specific case of the petitioners that the case bundle



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pertaining to O.S.No.382 of 2012, along with the application filed by the petitioners under Section 5 of the Limitation Act under Order IX Rule 9 of Civil Procedure Code was misplaced by the Court and the revision petitioners have also given a complaint before the Principal District Court on 07.12.2018 as well as the High Court on 07.03.2018 stating that the bundle has been misplaced by the Court, along with the applications filed by the petitioners. It has been further stated even in the affidavit that the petitions filed by the revision petitioners were not even returned and were only lying in the court bundle and the present application for condonation of delay was filed along with a copy of applications filed earlier to evidence that the earlier petitions had indeed been filed as stated in the affidavit.

5. The third respondent, who is the third defendant in the suit, filed counter affidavit stating that the delay of 1343 days is inordinate and that the petitioners are only trying to protract the proceedings.

6. The trial Court, on enquiry, finding that the petitioners have not adduced any proof in the support of the earlier applications having been actually filed as contended by them, dismissed the application for condonation of delay.

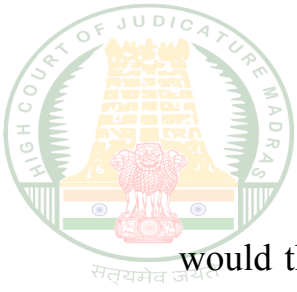


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7. Learned counsel for the petitioners would state that the trial Court, on an erroneous assumption that the bundle was misplaced in the Advocate's Office, proceeded to dismiss the application when the fact remains that the court bundle itself has been misplaced and that was the case projected by the petitioners in the affidavit filed in support of the application for condonation of delay and therefore, states that for the fault of the Court, parties should not be made to suffer and prays for the delay being condoned and the suit being restored to file so that the parties can agitate the matter on merits and in accordance with law.

8. Per contra, learned counsel for the respondents 1 and 2 would state that the trial court has rightly found that the petitioners have not produced any satisfactory documentary evidence to establish their contentions that earlier, applications had been filed and that the papers have been misplaced. Learned counsel also points out to the observations made by the trial court in this regard. It is also the contention of the learned counsel for the respondents that if really the earlier applications have been filed in November 2015, the revision petitioners could have provided atleast the SR number which would prima facie establish that the applications have been filed. He



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would therefore state that no exception can be taken to the order of the trial Court dismissing the application by refusing to condone the delay.

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

10. The revision petitioners have filed a suit in O.S.No.382 of 2012 for partition and separate possession. The case of the revision petitioners is that the properties are belonging to Narayanasamy Pillai. He had two sons viz., Thiruvengkatam Pooillai and Ramasamy Pillai. The said Thiruvengkatam Pillai had one son viz., T.Venkatachalapathy/1st respondent herein and the said T.Venkatachalapathy had four daughters, two of whom were alive and two had died prior to the filing of the suit. Admittedly, the parties are related and the plaintiffs approached the Court only seeking partition of the family properties.

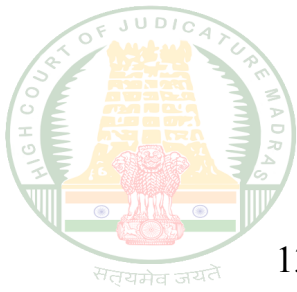
11. It is not in dispute that the suit came to be dismissed for non-prosecution on 05.11.2014. It is the specific case of the petitioners that an application was filed under Order IX Rule 9 of Civil Procedure Code to set aside the order of dismissal of the suit for non-prosecution, along with an



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application to condone the delay. The said applications were filed on 28.11.2015 and thereafter, the Court bundle went missing with other bundles and along with the same, the applications filed by the petitioners also went missing.

12. It is specifically averred in the affidavit filed in support of the petition that the said applications filed by the petitioners have also not been returned by the Registry pointing out any defects. Thereafter, it is also noticed that the petitioners have addressed a complaint to this Court as well the Principal District Court pointing out the fact that the petitioners have filed application for setting aside the dismissal of the suit for non-prosecution and that the case bundle has been misplaced. The said representation/complaint was given on 07.03.2018, which is prior to the filing of the present applications in I.A No.73 of 2019. In the said representation, the first revision petitioner has stated that his application was filed on 28.11.2015 and it was returned and thereafter, represented on 05.12.2015 and thereafter, the application has not been processed and it has neither been numbered nor returned. He has also requested that misplaced bundles be traced and his application be numbered and taken up for hearing.



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13. In view of the above, there is merit in the submissions made by the learned counsel for the revision petitioners that the court bundle was indeed misplaced and the revision petitioners have also taken diligent steps to request the Court to trace the bundle so that the miscellaneous applications filed by the revision petitioners can be taken up and the exparte order dismissing the suit for non-prosecution is set aside.

14. Merely because the petitioners have not been able to furnish the SR number, the parties should not be made to suffer, especially when the specific contention of the petitioners is that the court bundle itself has been misplaced. The Court should have taken a lenient view in the matter and also should have noticed that the suit is only for partition amongst the family members and the delay ought to have been condoned, to revive the suit, in order to facilitate the disposal of the suit on merits.

15. Unfortunately, the trial court has rendered an incorrect finding as if the Advocate's bundle has been placed and probably this had led to the conclusion that the delay has not been explained satisfactorily. The act of the Court should not prejudice any litigant and the therefore, in order to afford a fair opportunity to the petitioners, I am inclined to condone the delay.



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16. For the foregoing reasons, the order passed by the Principal District Munsif Court, Kallakurichi in I.A.No.73 of 2019 in O.S.No.382 of 2012 dated 03.01.2020 is set aside and the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

26.09.2025

Index: Yes/No
Speaking Order/Non-Speaking Order
sr

To
The Principal District Munsif, Kallakurichi

P.B.BALAJI,J.

sr



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Pre-Delivery Order in
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