



WEB COPY

CRP No. 525 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31-07-2025

CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

CRP No. 525 of 2025 & CMP.No.3032 of 2025

1. Abdul Gafoor

S/o.Varusai Mohammed No.4, Marcoss
Street, Alandur, Chennai-600016

Petitioner(s)

Vs

1. Prema Alias Premavathy

W/o.Murali, No.9, Decaster Road,
Chennai-600012

2.R.Thangavelu

S/o.Rajarithnam, VGN Crona, No.60,
61, 2nd Floor, Sankaralingam Street,
Chennai

Respondent(s)

PRAYER Petition filed under section 115 of Code of Civil procedure to set aside the order dt. 06.11.2024 passed in IA No.1 of 2024 in IA No.432/2021 in OS No.161/2016, on the file of the Subordinate Judge, Alandur

For Petitioner(s): S.Mohameduduman

For Respondent(s): S.Shyamala – R1

**ORDER**

WEB COPY

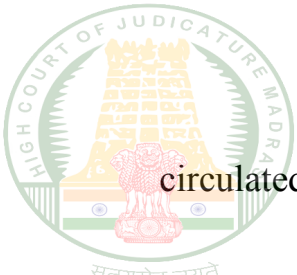
Challenging the dismissal of the application filed to condone the delay of 2095 days in filing an application to set aside the exparte preliminary decree dated 28.04.2018 passed in the suit, the present Civil Revision Petition has been filed.

2. An application has been taken out by the revision petitioner to condone the delay of 2095 days in filing an application to set aside the exparte preliminary decree passed against him on the ground that the petitioner had purchased the property in the year 1992 and construction has been put up by the second defendant, who is the father of the plaintiff. According to him, he was residing in London and no summons were served to him and preliminary decree has been passed against him on 28.04.2018. The suit has been originally filed by the plaintiff claiming partition of the property on the ground that as per Will of her grandfather dated 12.07.1984, she became entitled to life interest. However, he had dealt with the property. Therefore, the suit has been filed. In



the suit, an ex parte decree has been passed on the ground that the substituted service has been taken in 'Makkal Kuaral' and none appeared for the respondents and hence, an ex parte decree was passed on 28.04.2018. The said application has been opposed by the respondent on the ground though the first defendant is residing in London, he had rented the suit premises to his sister and she had received the summons in the suit. Hence, opposed the petition. The trial Court taking note of the various judgments of the Apex Court, dismissed the application on the ground that reasons assigned is not satisfactory and negatived the application.

3. I have called for the records from the trial Court. A perusal of the notes paper of the suit same indicate that summon has not been served to the first defendant at any point of time and the endorsements indicate that summons have not been served since he has gone to other country. The summons for the first defendant has been served on his sister on 09.08.2016 and therefore, he was called absent and thereafter, the matter has been once again adjourned for taking summons for the first defendant and suddenly substituted service has been Ordered and publication has been Ordered in Makkal Kural which is



circulated only in small area and thereafter, on 09.08.2017, the first defendant was set exparte. The above facts clearly indicate that the summons have not

been served to the revision petitioner. The fact that the revision petitioner is residing in London also not disputed by the respondents.

4. According to the revision petitioner, he had purchased the property on 14.12.1992 and the sale has been made by the father on behalf of the minors as guardian. The suit has been filed by the daughter. Be that as it may. This Court is not inclined to venture into the merits of the case. As the summons have not been served to the revision petitioner as per Order 5 Rule 17 and 18 of Code of Civil Procedure, mere length of the delay is not a matter. Whether proper opportunity has been given to the petitioner and he has failed to appear before the Court is the crux of the issue. Admittedly, summons have not been served as per the records of the trial Court. Since he is residing in London and now only he came to India and that based on the preliminary decree, an application for final decree has been filed and the petitioner had received notice in the final decree proceedings. The fact remains that no summons have been served to the



petitioner as per the Court records. In such view of the matter, every lis, in view of this Court, has to be decided on adjudication.

WEB COPY

5. Accordingly, this Civil Revision Petition is allowed and the Order of this Court in I.A.No.1 of 2024 in I.A.No.432 of 2021 is set aside. The trial Court shall decide the application under Order 9 Rule 13 of Code of Civil Procedure on merits and in the event the same is allowed, thereafter, decide the suit on its own merits. No costs. Consequently, connected miscellaneous petition is closed.

31-07-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

vrc

To

The Subordinate Judge,
Alandur



WEB COPY

CRP No. 525 of 2025



N.SATHISH KUMAR J.

CRP No. 525 of 2025

31-07-2025