



CRP.No.1711 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Dated 18.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP.No.1711 of 2025
and CMP.No.9893 of 2025

V.Sivalingam

... Petitioner

Versus

1.Radha
2.V.Mahalingam
3.B.Santhiappan
4.G.Shanmugam
5.B.Thangaraj
6.B.Sivakumar

... Respondents

Prayer: Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair order dated 30.08.2024 passed in I.A.No.398 of 2021 in O.S.No.297 of 2013 on the file of the Subordinate Judge, Alandur.

For petitioner : Mr.S.N.Subramani

For respondent : Mr.D.Bharanidharan for R2
Mr.R.S.Rabi Anandh for R1 & R3 to R6



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ORDER

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Challenging the impugned order dismissing the application filed to condone the delay of 458 days in filing the petition to set aside the exparte decree dated 13.04.2018, the present revision has been filed.

2. The suit has been filed by the first respondent/plaintiff in O.S.No.297 of 2013 seeking for partition and declaring the will dated 11.09.1973 on the file of SRO, Pallavaram in Doc.No.19/1973 as null and void. The suit was decreed exparte on 13.04.2018. The said decree was sought to be set aside on the ground that the petitioner/second defendant came to know about the exparte decree only when the second defendant sought for case papers, immediately presented the application seeking condonation of delay in setting aside the exparte decree. The same was opposed by the respondent on the ground that there is no bonafideness and the delay is huge. The Trial Court had dismissed the application vide the impugned order. Challenging the same, the present revision has been filed by the plaintiff/revision petitioner.

3. The main contention of the learned counsel for the petitioner is that since



the advocate had not informed about the hearing of the suit, he could not appear

before the Court and therefore, the order has been passed. That apart, the suit is filed for partition claiming several properties and the plaintiff herself has given no objection in allowing the Section 5 application, therefore, his substantive rights cannot be taken away. Hence, seeks for allowing this revision.

4. Heard both sides and perused the materials placed on record.

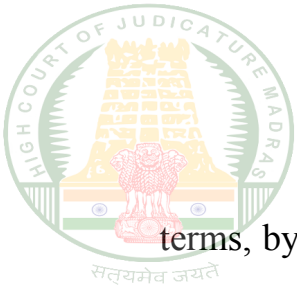
5. What is required under Order 9 Rule 13 of CPC is sufficient cause which prevented the defendants from appearing before the Court when the suit was called on for hearing. Therefore, it is imperative that sufficient cause must be shown by the party. No doubt, merely entrusting case to an advocate, the litigant cannot contend that the responsibility of the case lies only with the advocate and he is absolved from pursuing the matter vigilantly. The litigant should be vigilant in pursuing and monitoring the case, therefore, mere blaming lawyer will not help the litigant in condoning the delay. But, at the same time, while deciding the application under Section 5 of the Limitation Act, the fact remains that every case has to be seen with respect to conduct of the parties and nature of the suit. It is



relevant to note that though the party has not established sufficient cause while

deciding whether there is sufficient cause or not, the Court must also bear in mind the object of doing substantive justice.

6. The suit has been filed by the first respondent/plaintiff claiming partition, declaring will dated 11.09.1973 as null and void and other reliefs. Though reasons are not satisfactory, the same cannot be a ground to take away the substantive right. Since, the plaintiff herself has given no objection in allowing the application and taking note of the registered will executed in their favour, the substantive rights of the party cannot be taken away merely based on negligence on the part of the parties in prosecuting the partition suit. Mere negligent or mistake on the part is the order of the day. However, making false affidavit has become routine affairs of the irresponsible counsel, therefore, the substantive right of the party cannot be taken away. The Hon'ble Apex Court in the case of *Robin Thapa vs. Rohit Dora* reported in (2019) 7 SCC 359. On facts, finding that the appellant contention that he came to know about the passing of decree only on 17.11.2015 cannot be acted upon and disbelieved the contention, still considering the fact that the suit was filed for specific performance, in the interests of justice allowed the application on



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terms, by holding so, the Hon'ble Apex Court has held that Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.

7. Considering the above dictum, the nature of the suit and a registered will being executed in their favour, this Court in order to give one more opportunity to the petitioner/second defendant to agitate his right in respect of his share is inclined to grant one more opportunity to contest the suit on merits by the parties. Accordingly, the impugned order is liable to be set aside and the same hereby stands set aside.

8. The Trial Court is directed to decide the petition under Order IX Rule 13 of Code of Civil Procedure. In the event, the Order IX Rule 13 petition is allowed, the Trial Court shall decide the suit on merits and dispose of the same within a period of three months thereafter.

N. SATHISH KUMAR, J.



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WEB COPY 9. Accordingly, this revision stands allowed. No costs. Consequently, connected miscellaneous petition stands closed.

18.07.2025

Index : Yes / No
Speaking/non speaking order
dhk

To,

1. The Sub Judge
Subordinate Court, Omalur, Salem

2. The Section Officer
VR Section, Madras High Court

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