



C.R.P.Nos.499 & 2943 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2025

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.Nos.499 & 2943 of 2025

Chellammal

... Petitioner

Vs.

1.Raman
2.Logammal @ Logeswari
3.Vimala
4.Sumathi
5.Logesh
6.Vaisali

7.The Managing Director
I.M. Geer Company Private Limited
Vedavakkam Village and Post
Madurantakam Taluk

8.Damodaran

... Respondents

Common Prayer : Civil Revision Petitions filed under Section 115 of Code of Civil Procedure, to set aside the order dated 03.09.2024 passed in I.A.No.1 of 2022 and 3 of 2022 respectively in O.S.No.185 of 2013 on the file of the District Munsif Court at Madurantakam.

For Petitioner : Mr.S.Sukumar
For Respondents : R1 to R3- Notice Served (Non appearance)
R4 to R6 – No such person (Notice returned)
Mr.S.Anil Sandeep for R7
Mr.S.Vasudevan for R8



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COMMON ORDER

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The present petitions have been filed under Section 115 of Code of Civil Procedure impugning the common order dated 03.09.2024 passed by the learned District Munsif, Madurantakam. By the impugned common order, the application under Order IX Rule 9 of CPC which was filed by the petitioner/plaintiff seeking restoration of the suit which was dismissed for default on 11.09.2017 as well as the accompanying application under Section 5 of the Limitation Act, 1963 seeking condonation of delay in filing the restoration have been dismissed.

2. CRP.No.499 of 2025 has been filed challenging the dismissal order to condone the delay in filing the petition to restore the suit. CRP.No.2943 of 2025 has been filed challenging the consequential dismissal order filed under Order IX Rule 9 to restore the suit.

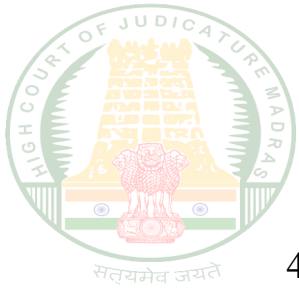
3. The petitioner has filed the suit in O.S.No.185 of 2013 for partition as against her brothers, sisters and also the subsequent purchasers. In the said suit, she has also sought for relief of declaration in respect of the partition deed entered between the defendants without making her as a



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party as null and void and also for a declaration in respect of the sale deed made in favour of the subsequent purchaser as null and void. When the suit was posted for trial, due to non appearance, the suit was dismissed for default on 11.07.2017. The petitioner filed applications in I.A.No.1 of 2002 and 3 of 2022 for condoning the delay in filing the petition to restore the suit as well as application under Order IX Rule 9 to restore the above suit. In the said applications, it is the contention of the revision petitioner that she has engaged an advocate named Rajkumar in the year 2013 and he has not informed about the further hearing of the case till 2016, only when she enquired with the other litigants, she came to know about that the dismissal of suit for default. Therefore, there was a delay of 1510 days in filing the restore application. The said application has been opposed by the respondents 7 and 8/subsequent purchaser on the ground that the petitioner knowing very well about the sale deed, the petitioner alone is enjoying the suit property and each and every day delay has not been explained by the petitioner. The Trial Court had dismissed the applications vide common order dated 03.09.2024. Challenging the same, the present revisions have been filed.



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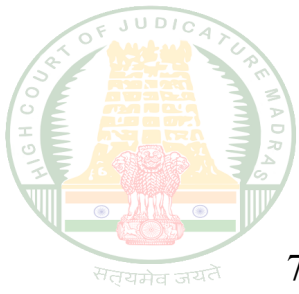
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4. The main contention of the learned counsel for the petitioner is that revision petitioner is poor and old, since the advocate had not informed about the hearing of the suit, she could not appear before the Court and therefore, the order has been passed. That apart, the suit is filed for partition claiming several properties and she is entitled to the shares, therefore, her substantive rights cannot be taken away. Hence, seeks for allowing this revision.

5. The learned counsel for the respondents 7 and 8 submitted that reasons assigned in the petitioner is only an afterthought, she has just blamed her previous counsel, whereas, her evidence clearly indicate that she failed in attending the Court and the matter was dismissed for default. Hence, opposed the revision.

6. In support of his submissions, he placed reliance on the following judgment:

Rajneesh Kumar and another vs. Ved Prakash reported in 2024 SCC OnLine SC 3380.

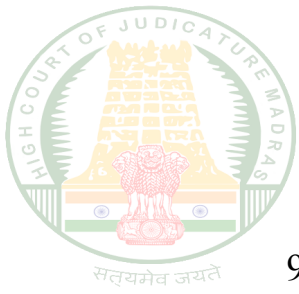


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7. Heard both sides and perused the materials placed on record. No doubt, merely entrusting case to an advocate, the litigant cannot contend that the responsibility of the case lies only with the advocate and he is absolved from pursuing the matter 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, their background and nature of the suit.

8. The suit has been filed by the petitioner/plaintiff claiming her share and other reliefs. Though the contention of the defendants 7 and 8 appears to be acceptable, the fact remains that they are purchasers of smaller extent in particular survey number and the suit has been filed for several properties against her kith and kin. Such view of the matter, substantive right cannot be taken away merely based on negligence on the part of the parties in prosecuting the partition suit. Particularly when the litigants are from the rural background and rustic villagers, their right cannot be curtailed merely on the basis of negligence on their own part also.



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9. Mere negligent or mistake on the party 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 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.

10. Similarly, a Division Bench of this Court in *Arun Alexander Lakshman vs A.P.Vedavalli* (2007 (4) CTC 449) has held that while considering the application under Section 5 of the Limitation Act, Court can also examine whether the petitioners have arguable points on facts and law. Failure to be

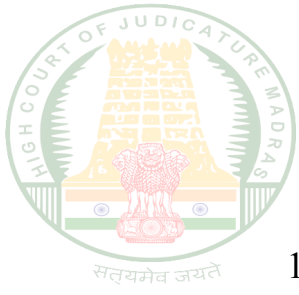


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extra vigilant by the party cannot be a ground to deny the opportunity to contest the suit and allowed the application with a cost of Rs.50,000/- and to deposit Rs.3,50,000/- to the credit of the suit.

11. Considering the above dictum and the nature of the suit filed in respect of various survey numbers, if at all, in the event of plaintiff succeeding in the suit, she will be entitled to her share in other survey numbers. That cannot be curtailed, therefore, even though the plaintiff allegation as against the counsel has not been established and appears to be an afterthought, this Court in order to give one more opportunity to the petitioner/plaintiff to agitate her right in respect of her share is inclined to grant one more opportunity to the revision petitioner subject to payment of costs of Rs.10,000/- payable to the respondents 7 and 8 within a period of one month from the date of receipt of a copy of this Order. Further, the cross examination of the petitioner also makes it clear that she is also aware of the sale made in favour of the defendants 7 and 8 and these years, she has not challenged and remained silent. Such view of the matter, the defendants 7 and 8 are certainly entitled to seek allotment of the same property in equity and the same can be worked out in the final decree proceedings.



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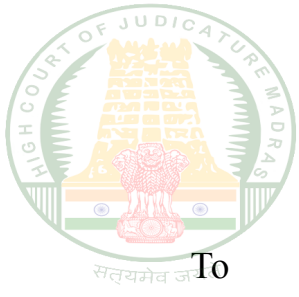
12. Similarly, since the order made in I.A.No.3 of 2022 dismissing the application filed under Order IX Rule 9 of CPC is a consequential dismissal order of the above application in I.A.No.1 of 2022 filed to condone the delay in filing the application to restore the above suit; for the foregoing reasons so as to provide an opportunity to the petitioner to agitate her rights in the partition suit, the order in I.A.No.3 of 2022 is hereby set aside.

13. In the result, these revisions are allowed. The impugned common order dated 03.09.2024 passed by the learned District Munsif, Madurantakam in I.A.Nos.1 and 3 of 2022 is hereby set aside. The trial court is directed to restore the suit in O.S.No.185 of 2013 to file and dispose of the same on merits on merits within a period of six months from the date of receipt of a copy of this Order. No costs.

16.07.2025

dhk

Internet : Yes



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To

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- 1.The District Munsif
Madurantakam
- 2.The Section Officer,
VR Section,
High Court, Madras.



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N. SATHISH KUMAR, J.

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