

THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 07.08.2025

Order pronounced on : 29.08.2025

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

CRP.Nos.1812 of 2024 & 1746 of 2025
& CMP.Nos.9545 of 2024 & 10048 of 2025

- 1.Vinayagam
- 2.Devi
- 3.Sivakumar
- 4.Raj Kumar
- 5.Shobana

..Petitioners in both CRPs

Vs.

- 1.Chinnaponnu @ Lakshmi

2.The Sub-Registrar Office,
Kaveripakkam,
Ranipet District.

- 3.The Sub-Registrar Office,
Damal, Kancheepuram District.

..Respondents in both CRPs

Common Prayer: Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the impugned order dated 26.11.2024 in I.A.Nos.1 and 2 of 2023 in O.S.No.90 of 2017 on the file of the learned Subordinate Judge, Arakkonam.

(In both CRPs)

For Petitioners : Mr.B.Vijay
for Mr.G.Dineshkumar



For Respondents : Mr.L.Ramkumar for R1
Mr.P.Gurunathan
Additional Govt. Pleader (CS) for RR2 and 3

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COMMON ORDER

These revisions have been filed, challenging the order of the Trial Court condoning the delay in filing an application to set aside the ex-parte preliminary decree and the consequent application to set aside the ex-parte preliminary decree.

2.I have heard Mr.B.Vijay, learned counsel for Mr.G.Dineshkumar, learned counsel for the petitioners and Mr.L.Ramkumar, learned counsel for the 1st respondent and Mr.P.Gurunathan, learned Additional Government Pleader for the respondents 2 and 3.

3.The learned counsel for the petitioners would submit that the suit for partition was filed in April 2017. The revision petitioners were set ex-parte in July 2017 and thereafter, a preliminary decree came to be passed only in April 2019. After the Advocate Commissioner was appointed in the final decree proceedings, the 1st respondent came up with an application, contending that he was not served with summons and that by way of abundant caution, an



application to condone the delay has also been filed. Inviting my attention to the order passed by the Trial Court, the learned counsel for the petitioners would submit that the 1st respondent came with a specific contention that he was not served with summons in the suit, but the Trial Court has found from the records that there was a proper affixture of the Court summons and it was deemed to be sufficient service and consequently, the ex-pare order came to be passed.

4.The learned counsel for the petitioners would further state that Order V Rule 17 of CPC permits such affixtures of notices/summons and it is deemed to be duly served and the Trial Court, having held that the averments made by the 1st respondent were not acceptable, ought not to have proceeded to show any indulgence or considering the merits of the defence, thought it fit to give an opportunity to the 1st respondent to contest the suit. The learned counsel for the petitioners, in support of his contention, would also place reliance on the decision of the Hon'ble Supreme Court in *Thirunagalingam Vs. Lingeswaran and Another*, in 2025 INSC 672.

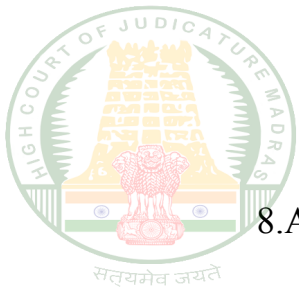
5.Per contra, the learned counsel for the 1st respondent would submit that only considering the nature of the reliefs sought for in the suit and the prejudice that would be caused to the 1st respondent, if he was not given an opportunity,



the Trial Court had thought it fit to allow the application with costs. He would therefore contend that when judicial discretion has been exercised in favour of the 1st respondent, the same shall not be lightly interfered in the revision.

6.I have carefully considered the submissions advanced by the learned counsel on either side. I have also kept in mind the decision of the Hon'ble Supreme Court.

7.I am able to see from the affidavit filed in support of the application for condonation of delay and to set aside the ex-parte preliminary decree that it is the specific contention of the 1st respondent that the 1st respondent did not receive any summons from the Court in the said suit and immediately on coming to know about the ex-parte decree, after inspection of the Advocate Commissioner in the final decree proceedings, the 1st respondent has approached the Court seeking to set aside the ex-parte decree. The said application was resisted by the revision petitioners, denying the self serving claims of the 1st respondent. It is also specifically contended that after the preliminary decree, I.A.No.34 of 2020 was taken out for appointment of an Advocate Commissioner in the final decree proceedings and even in the final decree proceedings, the petitioner did not appear and was set exparte on 13.03.2020 itself. Only thereupon the Advocate Commissioner was appointed and the report came to be filed by the Commissioner on 23.01.2023.



8. Admittedly, the 1st respondent had filed the application in December 2022. However, I do not find any discussion with regard to the specific contention of the 1st respondent that even in the application for appointment of an Advocate Commissioner in I.A.No.34 of 2020, the 1st respondent was put on notice and was set ex-parte on 13.03.2020 itself. This apart, I also find that there is no proper compliance of service by affixture.

9. Order V Rule 17 of CPC not doubt permits the serving officer to affix the copy of the summons on the outer door or some other part of the house, where the defendant ordinarily resides or carries on business or personally works for gain. The serving officer is required to return the original of the summons to the Court from which it was issued with a report endorsed thereon or annexed thereto, stating that he has so affixed the summon, setting out the circumstances under which he affixed the copy of summons and also specify the name and address of the person, if any, by whom the house was identified and in whose presence the copy was affixed.

10. Though the Trial Court has proceeded to render a finding that summons was affixed, the Court has not taken steps to ensure that the requirement of Order V Rule 17 of CPC was satisfied by the serving officer. In



fact, Order V Rule 19 further mandates that the Court has to examine the service officer on oath, touching the proceedings and after making further enquiry as the Court thinks it fits alone, the court can declare that the summons had been duly served. The said procedure appears to have not been followed.

11. In view of the foregoing and considering that the suit is one for partition, I am constrained to dispose of the revisions in the manner following:

(i) The orders dated 26.11.2024 in I.A.Nos.1 and 2 of 2023 in O.S.No.90 of 2017 on the file of the learned Subordinate Judge, Arakkonam, are set aside and the matters are remitted to the Trial Court.

(ii) A direction is issued to the Trial Court to first ascertain whether there has been compliance with the Order V Rules 17 and 19 of CPC, before setting the 1st respondent ex-parte. If the said procedure has not been followed, then the 1st respondent would have to be necessarily given an opportunity to contest the suit and thereafter, the Trial Court shall allow the interlocutory applications for condonation of delay and to set aside the preliminary ex-parte decree, in the event of the Trial Court coming to the finding that the procedure under Order V Rules 17 and 19 of CPC has not been followed.

(iii) Even in the event of there being compliance of Rules 17 and 19 of Order V of CPC, then the Trial Court shall see if there was proper service of notice in I.A.No.34 of 2020 and whether the 1st respondent being set ex-parte



on 13.03.2020 was after proper service on the 1st respondent. If the Court finds that the 1st respondent failed to appear in I.A.No.34 of 2020, despite service of notice, then even if there has been no compliance of Order V Rules 17 and 19 of CPC, the 1st respondent cannot be entitled to condonation of delay since he has not chosen to approach the Court immediately after he was put on notice of I.A.No.34 of 2020 as he has approached the Court only as late as December 2022, seeking to condone delay and set aside the exparte preliminary decree.

(iv) The Trial Court shall carryout the above exercise and dispose of the applications, in the light of the directions issued herein above, after perusing the records and also giving an opportunity to the counsel for the parties to put forth their contentions, limited to the factual matrix revolving around the directions issued herein above alone.

(v) There shall be no order as to costs. Connected Civil Miscellaneous Petitions are closed.

29.08.2025

Speaking/Non-speaking order

Index : Yes/No

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To

The Subordinate Judge, Arakkonam.



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CRP.Nos.1812 of 2024 & 1746 of 2025



P.B.BALAJI.J.

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Pre-delivery order made in
CRP.Nos.1812 of 2024 & 1746 of 2025
& CMP.Nos.9545 of 2024 & 10048 of 2025

29.08.2025