

A NO. 860 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **10-09-2025**

CORAM

THE HONOURABLE DR.JUSTICE R.N.MANJULA

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A NOS. 860,861 of 2025 and A NO. 1771 OF 2024 in CS NO. 48 OF 2017

B.Kanniappan

19 Subba Reddy street, West Mambalam, Chennai 33

Applicant(s)

Vs

Jamuna Rani and 2 others

D/o.A.E.Gopal Naidu, No.55/1, CPWS Quarters,
Thirumangalam, Chennai 600 040. and 2 Others

Respondent(s)

Respondent(s)

A NO. 1771 of 2024

B.Kanniappan

S/o.Balu Naiker, Old No.29, New No., Subba Reddy
Street, West Mambalam,, Chennai 600 033.

Applicant(s)

Vs

Jamuna Rani and 2 others

D/o.A.E.Gopal Naidu, No.55/1, CPWS Quarters,
Thirumangalam, Chennai 600 040. and 2 Others

Respondent(s)

CS NO. 48 of 2017

Jamuna Rani

55/1 CPWD Quarters, Thirumangalam Chennai 40

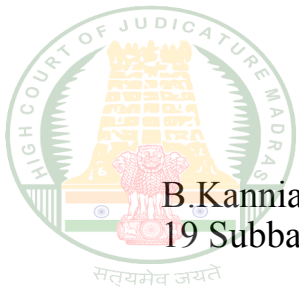
Applicant(s)

Vs

B.Kanniappan

19 Subba Reddy street, West Mambalam, Chennai 33
and 2 Others

Respondent(s)



A NO. 861 of 2025



B.Kanniappan
19 Subba Reddy street, West Mambalam, Chennai 33

Applicant(s)

WEB COPY

Vs

Jamuna Rani and 2 others
D/o.A.E.Gopal Naidu, No.55/1, CPWS Quarters,
Thirumangalam, Chennai 600 040. and 2 Others

Respondent(s)

A NO. 860 of 2025

For Applicant(s):

M/s. S Anand

For Respondent(s):

M/S.P.B. Ramanujam
For Defendant

A NO. 1771 of 2024

For Applicant(s):

M/s. S Anand

For Respondent(s):

M/S.P.B. Ramanujam
For Defendant

CS NO. 48 of 2017

For Applicant(s):

M/s.P.B.Ramanujam
No.19 L.C. High Ct. Ch-104

For Respondent(s):

M/s. S. Anand (732/2001)
For D1 - D.No. 7165/2024 Filed On 01.03.2024
Flat A Block A Malar Flats,
No.13a Babu Rajendra Prasad 1st St,
West Mambalam, Ch-33 (ph: 9282121839)
D2 Usha Rani
D3 - P.VANAJA ,1 Darmarajan street, Ram nagar,



Guduvancherry, Chennai
Deft Set Ex-parte On 25/02/2019
M/s.L.Arivakkarasi - Advocate Commissioner



A NO. 861 of 2025

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M/s.S.Anand

For Respondent(s):

M/S.P.B. Ramanujam
For Defendant

ORDER

A.No.1771 of 2024 is filed to condone the delay of 1676 days in filing the petition to set aside the ex-parte preliminary decree dated 10.07.2019 in C.S.No.48 of 2017. A.No. 860 of 2025 was filed to set aside the Ex parte preliminary decree dated 10.07.2019 in C.S.No.48 of 2017. A.No.861 of 2017 was filed to stay all the further proceedings pursuant to the Ex-parte preliminary decree dated 10.07.2019 in C.S.No.48 of 2017.

2. The prayer sought in A.No.1771 of 2024 to condone the delay of 1676 days in filing the petition to set aside the ex-parte preliminary decree dated 10.07.2019 in C.S.No.48 of 2017 has already been allowed by this Court on 12.12.2024. As the plaintiff got aggrieved due to that, she has take it on appeal by way of filing O.S.A.No.60 of 2025. The Hon'ble Division Bench



of this Court while disposing the O.S.A.No.60 of 2025 by way of its order dated 20.04.2025 has remitted the matter back for fresh hearing on the observation that the earlier order is not a speaking one.

3. On a perusal of the order of the Division Bench it appears that the learned counsel for the applicant had referred the Judgments of the Supreme Court held in *Rafil Vs Munshilal [(1981) 2 SCC 788]* and *Bhagmal and Ors Vs Kunwar Lal and Ors [(2010) 12 SCC 159]* and *Dwarika Prasad (D) Thr V Prithvi Raj Singh [2024 INSC 1030]*.

4. As the applicant has advanced the arguments that he can maintain the application filed to set aside the ex-parte decree even without filing an application to condone the delay in filing the application to set aside the ex-parte decree. But the said arguments has not been accepted by the Division Bench by drawing inference from the different circumstances involved in those cases.

5. In the case on hand even according to the contention of the applicant that he came to know about the ex-parte decree in February 2024 however, he



had chosen to file the set aside application only in the year 2025. As the applicant has not filed the application to set aside the ex-parte decree within

30 days of his alleged knowledge about the ex-parte decree, the applicant cannot claim that he should not be insisted to file an application for condoning the delay. Now having said that it has to be seen whether the applicant has given satisfactory and acceptable reasons to condone the delay.

6. It is the categorically submission of the learned counsel for the first respondent/plaintiff that the applicant has the knowledge about the pendency of the suit, even when the commissioner had inspected the suit property, the applicant's son was very much present. As per the report of the Advocate Commissioner dated 08.06.2022, she has inspected the suit property on 08.06.2022. In the said report it is stated that the first defendant was represented through his son Mr.Ganesh and the Commissioner had completed the inspection in the presence of the plaintiff and the first defendant's son Ganesh. So the pendency of the proceedings was known to the first defendant and his family members, even during the year 2022, when the Commissioner had inspected the suit property. So the applicant/first

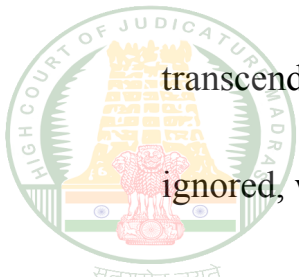


defendant cannot state that the notice has not been served upon him properly and hence he cannot effectively participate in the proceedings. The commissioner has stated in the report that the construction has been

completed in the year 2018 and the first defendant's family is residing in the building itself and occupying the 3rd floor residential portion of the building.

So in the said circumstances the construction in the above said property has been completed only in the year 2018 and the first defendant was in the occupation of the 3rd defendant's residential portion of the building situated in Door No.19, Subba Reddy Road. Therefore, the summons which has been served in Door No.19 could have very much served on him.

7. The applicant has attempted to take advantage of the sale agreement dated 18.12.2004, wherein, the door number has been mentioned as 19 instead of 29. In order to canvass his point he states that the Court notice was sent to a wrong address. As the very occupation of the first defendant in the building at Door No19 in the third floor has been established, the applicant cannot get an order favouring his prayer. Though a procedural approach is required by this Court for condoning the delay, such a liberty cannot be allowed to



transcend the limits. Lack of bonafide on part of the applicant cannot be ignored, while considering the application to condone the delay. The conduct

of the applicant would show that he had not come with the real facts before the Court. As the very reasons stated by the petitioner for condonation of delay itself is proved to be utter false, the application of the petitioner to condone the delay cannot be considered favourably.

8. In the result the application in A.No. 1771 of 2024 in CS. No. 48 of 2017 is dismissed. Consequently, both the connected applications in A.Nos. 860 and 861 in CS.No. 48 of 2017 are also dismissed.

10-09-2025

A NO. 860 of 2025

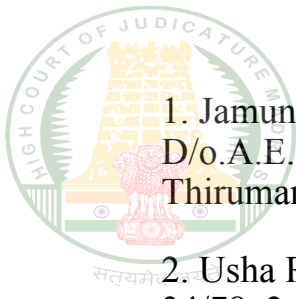
To

1. Jamuna Rani and 2 others
D/o.A.E.Gopal Naidu, No.55/1, CPWS Quarters,
Thirumangalam, Chennai 600 040.

2. Mrs.Usha Rani
D/o.A.E.Gopal Naidu, No.345/78, 2nd Street, Amman Nagar, Tiruverkadu,
Chennai 600 077.

3. P.Vanaja
W/o.Parthasarathy Naidu, No.11, Dhamarajan Street, Ram Nagar,
Guduvancheri, Chennai 603 202.

A NO. 1771 of 2024



1. Jamuna Rani and 2 others
D/o.A.E.Gopal Naidu, No.55/1, CPWS Quarters,
Thirumangalam, Chennai 600 040.

2. Usha Rani
34/78, 2nd street, Amman nagar, Thiruvekadu, Chennai 77

3. P.Vanaja
W/o.Parthasarathy Naidu, 1 Darmarajan street, Ram nagar, Guduvancherry,
Chennai

CS NO. 48 of 2017

1. B.Kanniappan
19 Subba Reddy street, West Mambalam, Chennai 33

2. Usha Rani
34/78, 2nd street, Amman nagar, Thiruvekadu, Chennai 77

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R.N.MANJULA,J.



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A NO. 1771 OF 2024 in CS NO. 48 OF 2017**

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