

C.R.P. No.923 of 2016

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P. No.923 of 2016

1.Thenmozhi @ Ochara (Died)

2.Kannan

3.Muniyapillai

4.Kalaiselvi

5.Balasubramanian

... Petitioners

(Petitioners 2 to 5 are brought on record as
LRs of the deceased sole petitioner vide
Court Order dated 15.03.2024 made in
C.M.P. Nos.3189, 3191, 3193 and 3194 to
3196 of 2022 by SSJ)

Vs

1.Ramakannu (Died)

2.Ezhumalai

3.Arumugam

4.Senthil

5.Indiragandhi

6.Vellayee

7.Annamalai

8.Ashokan

9.Radhakrishnan

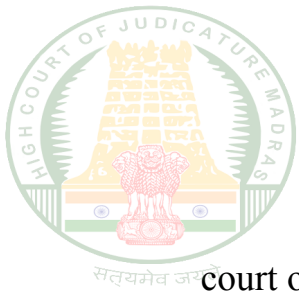
10.Parthiban

11.Ramani

12.Kullammal

... Respondents

(Respondents 9 to 12 are brought on record as
LRs of the deceased R1 viz.Ramakannu vide



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court order dated 15.03.2024 made in CMP
Nos.3189, 3191, 3193 and 3194 to
3196 of 2022 by SSJ)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order of the District Munsif Court at Sankarapuram, dated 22.12.2024 in I.A. No.628 of 2012 in O.S. No.562 of 2005.

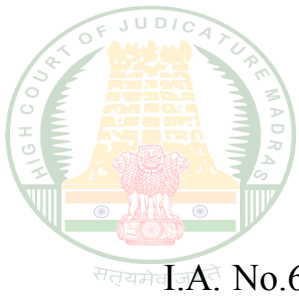
For Petitioner : Mr.P.Valliappan, Senior Counsel
for M/s.S.M.S.Shriram Narayanan

For Respondents : No Appearance

ORDER

The present civil revision petition is filed against the order or dismissal dated 22.12.2024 passed by the learned District Munsif, Sankarapuram in I.A. No.628 of 2012 in O.S. No.562 of 2005.

2. The first revision petitioner is the plaintiff in the above said suit and petitioners 2 to 5 are her legal heirs. The said suit was filed for partition. The suit was dismissed for non-prosecution and therefore an application was filed in



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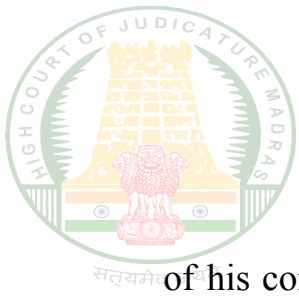
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I.A. No.628 of 2012 for condonation of delay in filing an application to restore the suit. The absence was due to her ill health and therefore, there was a delay of 1318 days.

3. It is submitted by the learned senior counsel that the plaintiff had suffered paralysis and therefore, she could not appear before the court and hence the suit was dismissed for default and the factum of dismissal of the suit was not brought to the notice of the plaintiff and therefore, an inordinate delay of 1318 days had occurred.

4. The trial court had dismissed the application for condonation of delay taking into consideration that the plaintiff has not established the cause of delay by producing adequate documents. Challenging the said order, the present civil revision petition is filed.

5. Mr.P.Valliappan, the learned senior counsel appearing for the petitioner would contend that since the suit was filed for partition, there is no bar under Order IX Rule 9 to file a fresh suit, however, the plaintiff wanted to proceed from the stage of the case when it was dismissed for default. In support



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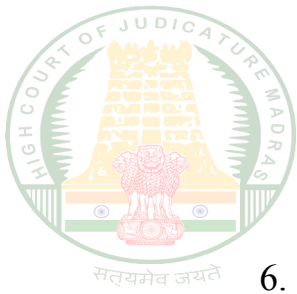
of his contention, the learned senior counsel relied on a judgment of this court in ***Balamani & Ohters v. Balasundaram reported in 2010-1-L.W.601***, wherein in paragraphs 12 and 14, it has been held as follows:

12. The learned counsel for the plaintiffs cited the following decision:

(i) AIR 2003 Himachal Pradesh 32 [Asha Sharma and others v. Amar Nath and others].

As such, both the decisions would highlight and spotlight the fact that in a partition suit, the cause of action is a continuing one and hence Order 9 Rule 9 of CPC cannot be pressed into service. I would also like to agree with the said proposition, in view of the fact that the valuable right of a co-sharer should not be deprived because for one reason or other, the earlier suit might not have been able to be prosecuted further to its logical end.

14. As such, I am of the considered view that the first appellate court was wrong in applying Order 9 Rule 9 of CPC in this partition suit. Accordingly, the substantial question of law No.1 is decided in favour of the appellants as against the defendant.

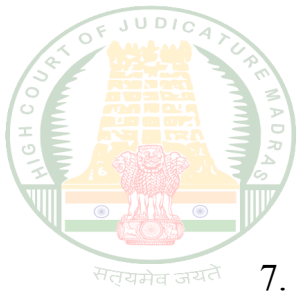


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6. In yet another judgment of this court in ***Thilagavathi and Ors. vs. Baskaran and Ors.*** reported in ***MANU/TN/1674/2024***, in paragraph 10 it was held as follows:

10. This court considered the rival submissions made by the parties. Since the suit is filed for partition, there is no bar under Order 9 Rule 9 to file a fresh suit. However, the petitioners wanted to proceed with the matter from the stage of the case when it was dismissed for default. The reasons stated by the petitioner is that no notice was served to them after transfer of the case from District Munsif Court to Sub Court, Ariyalur. It is for the parties to follow the case, when the case is transferred from one court to other court, but in this case there is no clarity as to whether any notice served to the parties after transfer of the case from District Munsif court to Sub Court, Ariyalur. Therefore, considering the nature of suit and the right of the parties involved, it is appropriate to give chance to the petitioner to proceed the case on merits. It is settled law that mere long delay is not a ground to curtail and deny the substituted rights of the parties when there is no malafide intention.



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7. This court finds force and substance in the argument of the learned senior counsel and the judgments relied on by the petitioners. Accordingly, this court is inclined to set aside the order of the trial court.

8. Accordingly, the civil revision petition is allowed. The order of the learned District Munsif, Sankarapuram, dated 22.12.2024 made in I.A. No.628 of 2012 in O.S. No.562 of 2005, is set aside. The suit is restored on file. As the suit is of the year 2005, the learned District Munsif, Sankarapuram is directed to conclude the trial of the suit within a period of six months from the date of receipt of a copy of this order. The trial court may also take cognizance of the fact that on the side of the defendants none appeared before this court. No costs.

21.03.2025

Index : Yes / No

Neutral Citation : Yes / No

Asr

To

The District Munsif, Sankarapuram



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N.SENTHILKUMAR, J.

Asr

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