



C.R.P.No.1476 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 09.04.2025

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.1476 of 2025
and C.M.P.No.8659 of 2025

Sundaram (Died)

Sampath Kumar (Died)

1. Sagunthala

2. Chandrasekar

3. Sumathi

4. Kalayarasi

5. Muthulakshmi

6. Prakash

... Petitioners

Vs

Sadhasivam (Died)

1. Annapoorani

2. Seethapathi

3. Vijayalatha

4. Shanmugam

5. Jayaraman

6. Muthulakshmi

... Respondents



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PRAYER : Civil Revision Petition filed under Section 115 of Civil Procedure Code, pleaded to set aside the fair and final order dated 04.02.2025 passed by the learned District Munsif, Sulur made in I.A.No.2 of 2024 in O.S.No.346 of 2007.

For Petitioners : Mr.L.Mouli

ORDER

The present revision petition has been filed by the legal heirs of the defendants 1 & 2, aggrieved by the order passed by the learned District Munsif, Sulur, on 04.02.2025 in I.A.No.2 of 2024 in O.S.No.346 of 2007, refusing to condone the delay of 4714 days, in filing the petition to set aside the ex parte decree dated 24.02.2010.

2. The brief facts of the case are as follows :-

2.1. The suit in O.S.No.346 of 2007 was filed by the plaintiff viz., Sadasivam, before the District Munsif Court, Palladam seeking partition as against the defendants therein. The revision petitioners are the legal heirs of the 1st and 2nd defendants in the suit. Initially, the suit was dismissed for default on 12.06.2008 and thereafter, it was restored, in which, the defendants were set ex parte on 12.02.2010 and a preliminary decree came to be passed on 24.02.2010.

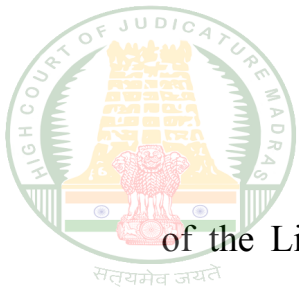


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2.2. Thereafter, the plaintiff Sadasivam, filed an application for passing of final decree in the suit and in the interregnum, the original defendants 1 and 2 had filed a petition to set aside the ex parte decree. However, in the year 2012, due to bifurcation of the District, the suit came to be transferred to the file of the District Munsif Court, Coimbatore and defendants 1 and 2 were informed by their counsel that notice will be served on them after the suit is renumbered. Thereafter, the bundles were misplaced in the registry and their earlier counsel also died and hence, the case papers could not be traced. In the meantime, the defendants 1 and 2 had also died on 10.01.2016 and 13.08.2014 respectively.

2.3. Thereafter, the suit came to be transferred from the District Munsif Court, Coimbatore to the District Munsif Court, Sulur, wherein, the revision petitioners received a notice in I.A.No.2 of 2022 in I.A.No.2251 of 2014 (renumbered final decree application) in O.S.No.346 of 2007 on the file of the District Munsif Court, Sulur. Since the application filed by the original defendants 1 & 2 could not be traced, the petitioners had once again filed the application seeking to set aside the ex parte decree dated 24.02.2010.

2.4. The application filed by the revision petitioners under Section 5



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of the Limitation Act, seeking to condone the delay of 4714 days in filing the petition to set aside the *ex-parte* decree dated 24.02.2010 was numbered as I.A.No.2 of 2024. In which, they have contended that the original defendants 1 & 2 came to know about the ex-parte decree only after receiving notice in the final decree proceedings and that the petitioners could not verify the status of the set aside application filed earlier, owing to the transfer of cases and the demise of their counsel.

2.5. The respondents had filed a counter stating that the petitioners ought to have filed the set aside application immediately after coming to know about the preliminary decree and that they have not taken any steps even in the year 2014 after receiving notice in the final decree proceedings, whereas, they have come up with the present application after 13 years and without any proper reasons.

2.6. The learned trial Judge, holding that the petitioners have not stated reasons showing sufficient cause for the delay of 4714 days, had dismissed the application vide order dated 04.02.2025. Challenging the same, the present civil revision petition has been filed.

3. Learned counsel appearing for the petitioners submitted that the trial



Court failed to consider the fact that the parties are family members and that the suit has been filed for partition, and as such, the revision petitioners ought to have been given an opportunity to contest the case on merits. He further submitted that the learned Trial Judge ought to have appreciated the evidence of the second petitioner/PW1 as well as Ex.P1 and Ex. P2, which would explain the delay in filing the petition seeking to set aside the ex parte decree and Judgment dated 24.02.2010. He also submitted that the trial Judge, without going into these aspects, had erroneously dismissed the application in I.A.No.2 of 2024 by order dated 04.02.2025 and prayed to set aside the same.

4. Heard the learned counsel for the petitioners and perused the materials available on record.

5. On perusal of records, this Court finds that an ex parte decree came to be passed by the trial Court in O.S.No.346 of 2007 on 24.02.2010 and the petitioners had, only in the year 2023, filed an application to condone the huge delay of 4714 days in filing the set aside petition. The trial Court, holding that the petitioners have not taken steps to file the petition seeking to set aside the ex parte decree even



after coming to know about the pendency of the final decree proceedings and have not stated reasons showing sufficient cause for the delay, had dismissed the petition.

6. It is relevant to refer to the decision rendered by the Hon'ble Apex Court in ***Union of India and Another vs Jahangir Byramji Jeejeebhoy (d) through his LR*** reported in ***2024 SCC Online 489***, wherein, the Hon'ble Apex Court has held that,

“ 35. In a plethora of decisions of this Court, it has been said that delay should not be excused as a matter of generosity. Rendering substantial justice is not to cause prejudice to the opposite party. The appellants have failed to prove that they were reasonably diligent in prosecuting the matter and this vital test for condoning the delay is not satisfied in this case.”

7. Further, in the case of ***H.Guruswamy and Ors vs A.Krishnaiah Since deceased by Lrs(Civil Appeal No.317 of 2025) (Special Leave to Appeal (C) No.9719/2020 dated 08.01.2025***, the Apex Court has held as follows:

“ 13. Time and again, the Supreme Court has reminded



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the District judiciary as well the High courts that the concepts such as “liberal approach”, “Justice oriented approach”, “substantial justice” should not be employed to frustrate or jettison the substantial law of limitation.

14. We are constrained to observe that the High Court has exhibited complete absence of judicial conscience and 9 restraints, which a judge is expected to maintain while adjudicating a lis between the parties.

15. The rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly.

16. The length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents herein, it appears that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona



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fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the 10 opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

17. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the ‘Sword of Damocles’ hanging over the head of a litigant for an indefinite period of time.”.

8. Section 5 of the Limitation Act is clear that only in the event of the petitioner satisfying the Court that he had shown sufficient cause for not preferring the appeal or making the application within such period, the Court shall admit the petition. Section 5 of Limitation Act is extracted for ready reference:-

“5. Extension of prescribed period in certain cases. - Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.-The fact that the appellant or the applicant was



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misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

9. Admittedly, the original defendants 1 & 2 came to know about the initiation of the final decree proceedings before their demise. A bare reading of the affidavit filed by the revision petitioners before the trial Court in support of their application seeking to condone the delay shows that they too, had knowledge of the ex parte decree dated 24.02.2010 after the demise of the original defendants 1 and 2. However, no sufficient cause has been shown by the petitioners to explain the enormous delay of 4714 days in filing the petition to set aside the ex parte decree and Judgment dated 24.02.2010. This Court is of the view that the petitioners have failed to prove that they were reasonably diligent in pursuing the matter and does not find any illegality or infirmity in the order passed by the learned Trial Judge, rightly refusing to condone the delay of 4714 days.

10. In fine, the Civil Revision Petition stands dismissed. Consequently,



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connected miscellaneous petition is closed. No costs.

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

1. The District Munsif, Sulur.

2. The Section Officer,

VR Section, High Court of Madras.



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A.D.JAGADISH CHANDIRA, J.

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