



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 07-03-2025

CORAM

THE HONOURABLE MR JUSTICE A.D.JAGADISH CHANDIRA

**CRP Nos.3581 and 3582 of 2024
and CMP Nos.19407 and 19408 of 2024**

Jeeva

Petitioner in CRP No.3581 of 2024

Usharani

Petitioner in CRP No.3582 of 2024

vs

1.Vanamayil
2.Rajakumari

Respondents in both the revisions

Civil Revision Petitions filed under Section 115 of the Civil Procedure Code against the fair order and final order in I.A.Nos.403 and 404 of 2017 in O.S.No.84 of 2011 dated 02.04.2024 on the file of Sub Judge, Cheyyar, Tiruvannamalai District, seeking to set aside the ex parte decree passed in O.S.No.84 of 2011.

For Petitioners: Mr.Avinash Wadhwani

For Respondents: No appearance

**COMMON ORDER**

WEB COPY The above Civil Revision Petitions are filed against the fair and final order in I.A.Nos.403 and 404 of 2017 in O.S.No.84 of 2011 dated 02.04.2024 on the file of the Sub Judge, Cheyyar, Tiruvannamalai District, seeking to set aside the ex parte Decree dated 12.08.2025 passed in O.S.No.84 of 2011.

2. Brief facts of the case:-

i) The respondents/plaintiffs filed a suit for partition in O.S.No.84 of 2011 against the petitioners herein, who are the defendants 2 and 4 respectively and two other family members. The petitioners, having remained absent, were set ex parte and an exparte judgment and decree came to be passed on 12.08.2015 in O.S.No.84 of 2011.

ii) Challenging the ex parte decree, the 2nd defendant/petitioner in CRP No.3581 of 2024 has filed a petition in I.A.No.403 of 2017 and the 4th defendant/petitioner in CRP No.3582 of 2024 has filed a petition in I.A.No.404 of 2017 to condone the delay of 417 days in filing the petition to set aside the ex parte decree passed on 12.08.2015.



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iii) The petitioner in I.A.No.403 of 2017 had contended that she had to accompany her husband to Orissa on his employment and thereby, she could not pursue the proceedings and she came to know about the ex parte decree only on her return and thereby sought to condone the delay of 417 days in filing the petition to set aside the ex parte decree.

iv) The petitioner in I.A.No.404 of 2017 had contended that though the suit was contested by herself and her husband/the 1st defendant, her husband alone had knowledge about the proceedings and after his sudden demise, she could not effectively contest the suit and she came to know about the ex parte decree having been passed only when the plaintiffs had attempted to interfere with the possession of the suit property and on receipt of letter from their counsel and thereby sought to condone the delay in filing the petition to set aside the ex parte decree.

v) The Trial Court had dismissed both the Applications vide orders dated 02.04.2024, challenging which, the revision petitioners are now before this court.

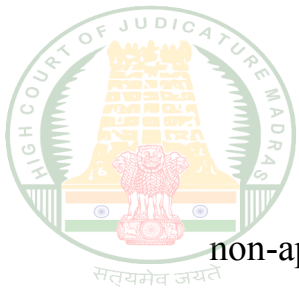
3. Learned counsel for the petitioners would contend that the husband



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of the petitioner in CRP No.3581 of 2024, viz., one Krishnan, was employed in Dastur Company at Orissa and was later transferred to various places, including Calcutta and Ballari and therefore, summons were not served on her and as a consequence, she could not contest the suit and thereby she was set ex parte. He further submitted that though the petitioner had filed necessary proof to show that her husband was transferred to various places, the same was not considered by the Trial Court in proper perspective, while dismissing the application, seeking to condone the delay and that the Trial Court had erred in holding that the petitioner had received summons on 09.07.2011 and on that date, the petitioner was residing in the address given in the plaint.

4. So far as the petitioner in CRP No.3582 of 2024 is concerned, the learned counsel would contend that the husband of the petitioner viz., the 1st defendant in the suit died on 01.03.2013 and that she was not acquainted with the proceedings prior to his demise. However, the Trial Court had dismissed the Application holding that even prior to the death of her husband, she was set ex parte on 05.01.2013. He further submitted that the



non-appearance of the petitioners is neither wilful nor wanton. He had emphasized that the petitioner in CRP No.3581 of 2024, immediately upon returning from her husband's place of employment, had preferred the application to set aside the ex parte decree along with an application to condone the delay of 417 days and as far as the petitioner in CRP No.3582 of 2024 is concerned, the Trial court ought to have taken a liberal approach, considering the reasons stated by her for the delay of 417 being bona fide and just. He further submitted that the delay in both cases is not huge and that the petitions were disposed on 02.04.2024 and if the petitioners are not given a chance to contest the case, their substantial rights would be affected. The learned counsel further submitted that when the petitioner in C.R.P.No.3581 of 2024 had produced documents to show that her husband was in employment in various States, the Trial Court has passed an unreasoned order.

5. In the civil revision petitions, though notice was served on the respondents and their names were printed in the cause list, there is no representation for them.



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

7. A perusal of the order passed by the court below makes it clear that the petitioner in CRP No.3581 of 2024 has filed four documents to prove the fact that the petitioner's husband was employed with Dastur Company and that he was employed at Orissa and various other places including Calcutta and Ballari. The learned Trial Judge, though had not rejected such proof produced by the petitioner, had chosen to dismiss the Application holding that she had already received summons on 09.07.2011 itself and she had not uttered in her Application or evidence, the details of her journey alongwith her husband to Orissa.

8. In so far as the petitioner in CRP No.3582 of 2024 is concerned, though the petitioner had contended that owing to the sudden demise of her husband on 01.03.2013, she could not pursue the proceedings, the Trial Court had dismissed the application by simply holding that even prior to the death of her husband, she was set ex parte on 05.01.2013 itself.



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9. Admittedly, the suit in O.S.No.84 of 2011 was filed for partition and the petitioners herein were set ex parte and subsequently, a preliminary decree came to be passed on 12.08.2015, without an opportunity for the revision petitioners to contest the suit on merits. Furthermore, this Court also feels that the delay of 417 days is not so huge and also taking into consideration the fact that final decree proceedings are still pending, the order passed by the Trial Court is liable to be set aside and accordingly, they are set aside.

10. In fine, the above Civil Revision Petitions are allowed and the orders dated 02.04.2024 passed by the learned Sub Judge, Cheyyar, Tiruvannamalai District in I.A.Nos.403 and 404 of 2017 in O.S.No.84 of 2011 are set aside. The ex parte decree is set aside and the suit is restored to the file of the Trial Court. The Trial Court shall issue notice to the plaintiffs/respondents herein and their counsel about restoration of the suit, commence the trial afresh from 23.6.2025 and conclude the same as expeditiously as possible, preferably within a period of four months from the date of appearance of the respondents. The revision petitioners shall co-



operate for speedy disposal of the suit. No costs. Consequently, the connected miscellaneous petitions are closed.

07-03-2025

sr/ssk.

Index:yes/no

Website:yes/no

To

The Sub Judge,
Cheyyar,
Tiruvannamalai District.



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A.D.JAGADISH CHANDIRA,J.,

sr/ssk.

CRP Nos.3581 and 3582 of 2024

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