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CRP.Nos.3541 & 3564 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.11.2025

Pronounced on: 05.12.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

CRP. Nos.3541 & 3564 of 2025

Ranganathan @ Rangasamy

Petitioner in both CRP

Vs

Mohan Kumar

Respondent in both CRP

COMMON PRAYER: This Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the Docket Order dated 09.07.2025 passed in Un-numbered I.A. No... of 2025 in O.S. No. 188 of 2008 on the file of II Additional District Judge, Tiruppur and consequentially direct to number the I.A. filed to condone the delay in filing petition for setting aside the exparte decree and to set aside the exparte decree.

For Petitioner : Ms.BA.Nalini for
Mr.K.V.Babu in both CRPs

For Respondents : Mr.V.P.Senguttvel,
Senior Counsel for
Mr.S.Satchithanantham
in both CRPs



COMMON ORDER

The 3rd defendant in O.S.No.188 of 2008 is the revision petitioner.

In CRP.No.3541 of 2025, the petitioner challenges the docket order dated 09.07.2025 in unnumbered IA, which was taken out to condone the delay of 316 days in filing the petition to set aside the ex-parte decree.

2.In CRP.No.3564 of 2025, the challenge is to a docket order order dated 09.07.2025 in unnumbered IA taken out to set aside the ex-parte decree.

3.The trial Court has returned the said applications, on the ground that the suit has been decreed on 24-01-2011, after full trial and the decree has also been confirmed by the High Court in A.S.Nos.591 and 592 of 2011 and consequently, the petitions are not maintainable.

4.I have heard Mr.K.V.Babu, assisted by Ms.B.A.Nalini, learned counsel for the revision petitioner in both the revisions and Mr.V.P.Senguttuvel, learned Senior Counsel for Mr.S.Satchitanantham, learned counsel for the respondent.

5.Mr.K.V.Babu, learned counsel for the petitioner would submit



that the suit was filed by the respondent, seeking the relief of partition and separate possession. The revision petitioner was the third defendant.

The petitioner was set ex-parte in the said suit and since other defendants were contesting the suit, trial was proceeded with and the trial Court passed a decree on 24.01.2011. The learned counsel for the petitioner also contends that there was yet another suit filed by the respondent in O.S.No.663 of 2010, in which the revision petitioner was not a party and both the suits were disposed of by a common judgment and even the suit O.S.No.663 of 2010 also came to be decreed. The learned counsel for the petitioner submits that the petitioner, along with his mother and brothers, namely the defendants 1, 3, 4 and 5 filed applications to set aside the ex-parte decree, along with an application to condone delay. The said application was filed on 06-01-2012.

6.It is the specific contention of the learned counsel for the petitioner that the said petitions were not taken on file and were kept pending. Though it is admitted by the learned counsel for the petitioner that the 13th defendant in O.S.No.188 of 2008 had preferred appeals in A.S.Nos.591 & 592 of 2011 before this Court, the said appeals were only dismissed for non-prosecution on 22-11-2019. It is also the specific contention of the learned counsel for the petitioner that in view of the



filing of the first appeals before this Court, the entire records were sent to this Court and hence, the petitions filed by the revision petitioner could not be taken up before the trial Court.

7.It is also the contention of the learned counsel for the petitioner that the respondent has proceeded to acquire the property from his vendors, to which they were not even entitled to any right. Referring to the relevant documents, the learned counsel for the petitioner submits that the vendors of the petitioner were entitled only to Item 3 and not any other property. It is also the contention of the learned counsel for the petitioner that the property was purchased only by one Venkatrama Routh, on behalf of the decree holder. There is absolutely nothing to substantiate as to how the decree holder, Komarappa Chettiar could claim ownership in the absence of any acceptable document to show transfer between Venkatrama Routh and Komarappa Chettiar.

8.The learned counsel for the petitioner would also state that even the power of attorney dated 07-08-2006 is a forged document and the IDs in the registered document do not match and therefore, serious fraud has been played upon the Court, as well as the petitioner and in such circumstances, the petitioner should be given an opportunity to contest



the decree. Insofar as the entitlement of the petitioner to seek setting aside the decree, even though the trial proceeded with as between the plaintiff and other defendants. The learned counsel for the petitioner relies on the decisions of this Court in *Venkatalakshmi @ Rathnamma Vs. Bayamma and others*, reported in 2003 (1) CTC 603, *K.Dhamodharan Vs. Janakiraman* in CRP.No.378 of 2017 dated 30.09.2021 and *Kandasamy Vs. Govindammal* in CRP(NPD).No.3067 of 2017 dated 30.03.2022.

9.Per contra, Mr.V.P.Senguttuvel, learned Senior Counsel appearing for the respondent would submit that it is not open to the petitioner to challenge the decree, after having sold the property to the 13th defendant, who in fact even challenged the decree for partition, as well as the decree of declaration in favour of the respondent, before this Court in A.S.Nos. 591 and 592 of 2011 and said appeals also came to be dismissed for non-permission. He would further submit that the revision petitioner was served with notice in the appeal and they had also entered appearance and therefore, learned Senior Counsel contends that it is not open to the petitioner to claim that since the appeal was only dismissed for non-prosecution, the rights of the revision petitioner cannot in any manner be prejudiced or affected.



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10.The learned Senior Counsel further submitted that the sale certificate issued way back on 13-05-1969 clearly certified that Venkatrama Routh had purchased the property only on behalf of the decree holder, Komarappa Chettiar and subsequent to the demise of Komarappa Chettiar on 19-07-1975, his legal heirs of Komarappa Chettiar have appointed one C.Ramasamy as their power agent on 1-11-2005 by registered deeds of power of attorney and from the legal heirs, through power agent, the respondent has purchased the property on 03-01-2006.

11.It is also contended by Mr.V.P.Senguttuvel, learned Senior Counsel that pursuant to the purchase, the respondent has also effected mutation of all revenue records in his name and he has been in the absolute possession and enjoyment. He would further state that in the application seeking to set aside the ex-parte decree and also condonation of delay, the Court cannot be called upon to examine the merits, which have already been decided after elaborate trial and attained finality, with the dismissal of appeals in A.S.Nos.591 & 592 of 2011 before this Court. He would further submit that the petitioner, along with the other heirs of Duraisamy, one of the sons of Ganapathy Gounder, without having any



title, have fraudulently attempted to deal with the entire extent of 35.08 acres and one Balasubramaniam, who in fact is also one of the legal heirs of Ganapathy Gounder, as power agent, has already conveyed the property to Ramalingam on 23-03-2007 in Document No.3721 of 2007. Pointing out to the fact that the decree passed by the trial Court in both the suits filed by the respondent was challenged only by the said Ramalingam, the learned Senior Counsel would submit that when the revision petitioner admittedly had no right or interest in the property, after having conveyed the same in favour of Ramalingam and the said Ramalingam having contested the suit and also challenged the judgment and decree by filing first appeals before this Court, the petitioner has no locus to now seek setting aside the ex-parte decree. He would further submit that the petitioner has not even explained how the delay is only 316 days, when admittedly there has been passage of more than 14 years since the decree came to be passed. He would therefore submit that there is no infirmity in the order of the trial Court, returning the applications, warranting interference in revision.

12.In reply, Mr.K.V.Babu, learned counsel for the petitioner submits that the petitioner no doubt admits that he has joined execution of sale in favour of Ramalingam, but however, it is contended by the



learned counsel for the petitioner that the petitioner was in an intoxicated stage when the LTI was obtained and therefore, the petitioner is entitled to disown the said document and all these can be established only if an opportunity is given to the petitioner to contest the suit on merits, after condoning the delay.

13.As regards the delay being 316 days, the learned counsel for the petitioner submits that since the petitioner had already moved an application before the trial Court for setting aside the ex-parte decree, along with the application to condone the delay of 316 days and the said applications were never taken on file, the petitioner is entitled to seek condonation of the very same delay and mere fact that subsequently there has been further delay, it cannot be put against the petitioner, as admittedly, the applications for setting aside the ex-parte decree and to condone delay were filed, freezing the delay at 316 days. He would further contend that it is only an application, renewing the earlier application, which has not seen the light of the day.

14.I have carefully considered the submissions advanced by the learned counsel for the petitioner and learned Senior Counsel for the respondent.

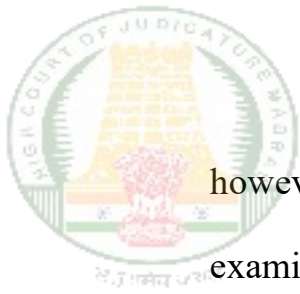


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15. Insofar as the first submission regarding the maintainability of the applications by the 3rd defendant to set aside the ex-parte decree, the legal position is clear, as laid down by this Court in the decision relied on by the learned counsel for the petitioner. There is no impediment for one of the defendants to resort to Order IX Rule 13 of CPC, even when the other defendants have contested the suit on merits and a decree has been passed in the said suit, as long as the decree remains an ex-parte decree insofar as the defendant who seeks to set aside the said ex-parte decree invoking Order IX Rule 13 of CPC.

16. In fact, the Hon'ble Supreme Court in *Bank of India Vs. Mehta Brother*, reported in 2009 1 L.W. 439, examining the provisions of Order IX Rule 13 of CPC, held that the ex-parte decree can be set aside and suit be revived qua the defendant who applies for setting aside the ex-parte decree alone and only if the decree is of such a nature that it cannot be set aside as against the defendant applying for setting it aside, then the decree can also be set aside against all the other defendants.

17. Though in view of the settled legal position, there can be no doubt that the petitions filed by the petitioner are maintainable in law,



however, at the same time, the conduct of the petitioner needs to be examined, considering the long passage of time and subsequent intervening circumstances. Though the petitioner claims that fraud has been played and the respondent has no valid title to the property and therefore he must be given an opportunity to contest the suit, it is to be seen that admittedly the petitioner has joined the execution of sale deed, along with his brothers in favour of one Ramalingam. The said Ramalingam was the 13th defendant in the suit and he has hotly contested the suits filed by the respondents and suffered a decree on merits. Aggrieved by the decree, the said Ramalingam, purchaser from the petitioner and others, also chose to challenge the decree before this Court in A.S.Nos.591 & 592 of 2011. However, the said appeals were not prosecuted diligently and the appeals came to be dismissed for non-prosecution. Till date, no steps have been taken by the revision petitioner to challenge the sale deed in favour of the 13th defendant.

18. Therefore, it is clear that the petitioner did not have any subsisting right in the suit property even as on the date on which the ex-parte decree came to be passed against him. His all interest, if any, in the suit property had been conveyed in favour of the 13th defendant, who had admittedly contested the suit. Therefore, the interest of the petitioner has



been adequately represented during trial.

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19. In fact, even in the appeals, as rightly contended by the learned Senior Counsel, the petitioner was a respondent in the appeals and he has also chosen to engage a counsel. The petitioner, if he had been diligent, would have at least brought it to the notice of this Court, when the appeals were dismissed for non-prosecution that he had already filed applications to condone the delay in setting aside the ex-parte decree and to set aside the ex-parte decree and could have reserved his rights and sought for suitable directions. No such attempt was made by the petitioner.

20. Insofar as the application filed by the petitioner to set aside the ex-parte decree, the petitioner has produced a certified copy of the affidavit and the petition filed on 06.01.2012. The Registry of the District Court, Tiruppur, has also furnished the certified copies on 29.07.2025, which clearly vindicate the stand of the petitioner that an application was indeed filed to set aside the ex-parte decree on 06.01.2012 itself. However, mere filing of an application would not suffice. The petitioner was conscious of the fact that the suit had already been decreed even on 24.01.2011 and was pending before this Court in first appeals, that too,



by way of challenge at the instance of the 13th defendant, who was only a successor in interest of the petitioner himself. In such circumstances, the petitioner should have been diligent, by seeking suitable directions regarding the applications filed for setting aside the ex-parte decree even in 2012, at least when the appeals were dismissed by this Court. In fact, the revision petitioner also had an option to substantiate himself in the place of the appellant and prosecuted the appeals.

21. Even though the petitioner may have a right to seek setting aside the ex-parte decree, when the estate has been adequately represented through the 13th defendant and the appeals filed by the 13th defendant also came to be dismissed, I do not see how the petitioner is going to gain or benefit by seeking to set aside the ex-parte decree.

22. Though it is the contention of the learned counsel for the petitioner that the sale in favour of the 13th defendant was effected when the petitioner was in an intoxicated stage, there is nothing brought on record before this Court to even show that the said sale deeds have been challenged by the petitioner till date. On the contrary, there is a claim made under an alleged Will said to have been executed by Duraisamy Gounder, father of the petitioner. However, as rightly pointed out by the



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learned Senior Counsel, in none of the earlier documents, there has been a whisper about the alleged Will and the property has continuously been dealt with, as if there was intestate succession alone. In such circumstances, there is merit in the argument of the learned Senior Counsel that the Will is probably fabricated and projected, only to defeat the rights of the respondent, who has succeeded in getting a decree in his favour in two suits.

23. Even as regards the delay of 316 days, I can understand that if it is a case of reconstruction of papers, then the petitioner may be justified in stating the same delay of 316 days. However, admittedly, fresh set of applications have been filed, much later in the year 2025 stating the delay to be only 316 days. Admittedly, the suit was decreed way back in 2011. If really, the petitioner was aggrieved or as he claims that there has been fraud and fabrication of documents in depriving him of his legitimate share, he could have stated all these and sought for the actual period of delay being condoned. It was always open to the revision petitioner to refer to the earlier attempt in seeking to set aside the decree, which did not see the light of the day. In such circumstances, it was not open to the revision petitioner to arbitrarily and unilaterally fix his own period of



delay and seek for condonation of the same. Even from this angle, I do not see how the petitioner is entitled to seek condonation of only 316 days. It is not a case where he is attempting to renew his earlier application filed in 2012. Admittedly, fresh application for condonation of delay has been filed only in 2025. Therefore, I do not see any merit or bonafides in the conduct of the petitioner in contending that the delay is only 316 days.

24.In view of the above, though the return of the applications by the trial Court as not maintainable, may not be proper in the legal context, in view of the above discussion, I am not inclined to entertain the revision petitions.

25.In fine, the Civil Revision Petitions are dismissed. There shall be no order as to costs.

05.12.2025

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Index : Yes / No

Internet : Yes / No

To:

The II Additional District Judge, Tiruppur



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P.B.BALAJI, J.,

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Pre-delivery order in
CRP. Nos.3541 & 3564 of 2025



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