



C.M.P.No.669 of 2023 in
S.A.No.824 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2025

CORAM:

THE HONOURABLE MR. JUSTICE **V. LAKSHMINARAYANAN**

C.M.P.No.669 of 2023 in
S.A.No.824 of 2004

Ganapathy Gounder

... Petitioner

Vs.

1.Hema Ammal
2.Vasanthi Ammal
3.Malathi Ammal
4.Gayathri Ammal
5.Radha Ammal
6.Jayanthi Ammal
7.Saroja Ammal

... Respondents

To condone the delay of 2866 days in filing the petition to set aside the judgment and decree dated 06.12.2014 passed by this Court in S.A.No.824 of 2004 and in rehearing S.A.No.824 of 2004.

For Petitioner :Mr.Ramakrishnan J

ORDER

The petitioner has filed this application to condone the delay of 2866 days in filing an application under Order XLI Rule 21 of the Code of Civil Procedure.

2. The suit, against which the second appeal arises, is one for partition. The suit was originally decreed. On appeal to the Additional District cum Fast Track Court at Tindivanam, the same was allowed. Aggrieved by the same, the plaintiffs had preferred the second appeal.



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3. In the second appeal, summons were served on the first, as well as second respondents. The first respondent engaged a counsel and so did his vendor, the second respondent. When the appeal was taken up for disposal on 06.02.2014, a counsel represented the respondents herein. None appeared for the petitioner. Hence, after hearing both sides, the second appeal stood allowed. The preliminary decree passed by the trial court stood restored. Therefore, the first respondent filed the present miscellaneous petition seeking the aforesaid relief.

4. In the affidavit filed in support of this application to condone the delay, the petitioner/first respondent has pleaded that he was not aware of the appeal having been allowed, till he was served with the final decree application in the year 2021. Thereafter, he pleaded that due to the onset of pandemic, he was not in a position to file an application immediately. Hence, he seeks to condone the delay.

5. I have gone through the affidavit. I find no reason given by the petitioner for not having contacted his counsel from February 2014 till February 2021. Even if I were to agree that he was waiting for an intimation from his counsel, there is no explanation as to why, from February 2021 till November 2022, he did not file any application. Fortunately, the pandemic left this country by April 2022. Here too, there is no reason regarding why



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the petitioner failed to file any application, from April 2022 to November 2022. The affidavit states that the petitioner was suffering from “continuous ill health”. As to what was the ill health, and what treatment was being taken by the petitioner have not been stated. The affidavit is as vague as possible.

6. I should remember that I am not dealing with an application to condone the delay in preferring an appeal. This is an application for rehearing the appeal, which a learned Judge of this court had already heard, applied his mind and found that the appellants are entitled to the relief that they have sought for. When that judgment and decree is sought to be set aside, the affidavit must be clear and not vague. Sufficient cause, while dealing in such a situation, should be explained in great detail. As the affidavit is full of lacunae, I am not inclined to come to the rescue of the petitioner.

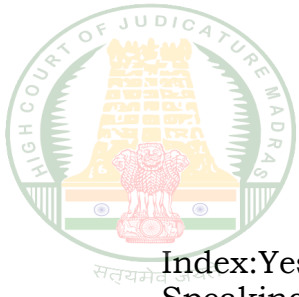
7. Furthermore, the learned counsel for the respondents submits that the final decree has been allowed and a petition for execution has also been presented. In the light of the above discussion, this civil miscellaneous petition is dismissed.

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Index:Yes/No

Speaking/Non speaking order

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