



C.R.P.No.298 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 26.02.2025

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.No.298 of 2025
C.M.P.No.1924 of 2025

1.N.Babu

2.Rani

3.N.Jayaraman

4.N.Sekar

5.Logeswari ...Petitioners

Vs

N.Pandurangan (since deceased)
represented by LRs

1.P.Vijaykumari

2.P.Gopinath(minor)

3.P.Sathish (Minor)

N.Sundarambal (Since deceased) ...Respondents
(respondents 2 to 3 are represented
by their mother and natural guardian
Mrs.Vijaykumari)
(Defendants 2 to 5 LRs brought on record
As per order dated 05.11.2007 made in
Application No.2970 of 2004)



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PRAYER :- Civil Revision Petition is filed under Article 227 of the Constitution of India, pleaded to set aside order and Decreetal order in I.A.No. 5 of 2021 dated 16.12.2022 in O.S. No. 827 of 2013 passed by the III Additional Judge, City Civil Court, Chennai.

For Petitioners : M/s.Vasudha Thiagarajan
For Respondents : Mr.T.N.C.Kaushik

ORDER

Challenging the order passed by the III Additional City Civil Court, Chennai, in I.A.No.5 of 2021 in O.S.No.827 of 2013, the plaintiffs/petitioners are before this Court.

2.The facts leading to the filing of the Civil Revision Petition are herein below set out briefly:-

The petitioners/plaintiffs had filed the suit C.S.No.174 of 2000 on the file of this Court which was later transferred to the file of the III Additional City Civil Court, Chennai, and renumbered as O.S.No.827 of 2013. The said suit was filed for a partition and separate possession of the half share of the plaintiffs in the suit schedule property. The property in question is the land and building measuring 2022 sqft bearing Door



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No.20, Abeethnagar, Choolaimedu, Madras – 600 094. The plaintiffs

would submit that the first, third and fourth plaintiffs are the sons of Nathamani Naicker, the brother of the first defendant (Originally the suit was filed only against one Pandurangan). Nathamani Naicker and the defendant Pandurangan are sons of R.Narayanasami Naicker. Narayanasami Naicker had purchased the suit schedule property from out of his own funds under a registered sale deed dated 10.10.1966. The plaintiff's father namely Nathamani Naicker had predeceased his father on 17.03.1979. Narayanasami Naicker died on 27.12.1980. The plaintiffs would submit that both the brothers and their families were living together in the same house. However, after the death of the Narayanasami Naicker, the defendants took the opportunity to take full control of the suit property and had denied access to the plaintiffs.

3.The plaintiffs would submit that they have been living in poverty and have no means to take care of themselves. The second plaintiff through her efforts had brought up the children. The fifth plaintiff is a widow who had lost had husband within eight months of marriage and has a small daughter. The plaintiff's case is that the defendants had been collecting rents without giving the share of the plaintiffs. They had been



repeatedly making demands for partition which was not acceded to.

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Meanwhile the sole defendant had undergone a bypass surgery and it was learnt that the defendant was attempting to alienate the property so as to deprive the plaintiffs of their legitimate right. Therefore, the plaintiffs had come forward with the suit in question.

4.The sole defendant had filed the written statement before this Court in C.S.No.174 of 2000 in which he would contend that the father of the plaintiffs was born to Narayanasami Naicker through his first wife Muthuammal and apart from Nathamani, there were two daughters namely Bakkiam and Renganayaki. After the death of the first wife, Narayanasami Naicker had married Sundarammal to whom defendant and one Indira were born. Nathamani had married one Pachalammal in the year 1965 and he had thereafter deserted her. Nathamani had also parted way from his father Narayanasami Naicker and he was living independently since 1966. The defendant would submit he is not aware about the relationship of the plaintiffs to Nathamani. The defendant would submit that the suit property is in no way connected to the defendant. Except for the door number and street number there was nothing to connect the defendant to the suit property. The property in the



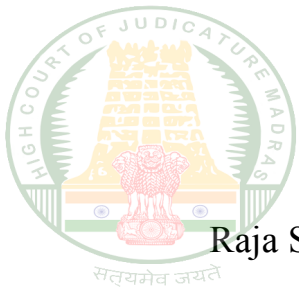
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possession and enjoyment of the defendant is the property of his mother

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Sundaramal who had purchased the same under a registered sale deed dated 14.06.1967. She had purchased it as a vacant site and thereafter developed the same stage by stage, from out of her income from the milk vending business. Nathamani and his family consisting of Sundarammal, the defendant and Indira were residing in an outhouse in Railway Quarters, Egmore till 1972. The family of Narayanasami shifted to Abeeth Nagar, Choolaimedu in a make shift thatched superstructure. The defendant who got employment in the railways was contributing his income for the maintenance of the family. The long and short of the written statement was that the property comprised in Door No.20, Abeeth Nagar was in the possession of the defendant and he has been collecting rents from the shops that have been constructed thereafter in the year 1997. The defendant is in occupation of the thatched house therein. The plaintiffs have never been in possession of the same and have no right over the same. Therefore, they sought for a dismissal of the of the suit.

5.The sole defendant died on 21.05.2002 and his legal representatives have been brought on record as defendants 2 to 4. This matter was transferred to the file of the City Civil Court, Chennai. One



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Raja Senthoo Pandian, C.Subramanian and R.Saranya had filed vakalath

on 30.10.2013. The defendants were however set ex-parte on 18.02.2014.

Ultimately, the ex-parte decree came to be passed on 11.09.2015 after several hearings that had taken place in between. The plaintiffs had thereafter filed I.A.No.2 of 2019 for passing of a final decree. In the final decree proceedings notice was issued to the defendant and once again the counsels who had originally appeared had entered appearance on behalf of the defendants and they were set ex-parte for non filing of the counter on 19.11.2019 (R2) and 16.03.2021 (R3 and R4). Ultimately on 15.04.2021, the Advocate Commissioner was appointed. Only on 20.09.2021, the defendants have come forward with the application I.A.No.5 of 2021 to set aside the ex-parte decree dated 11.09.2015 in O.S.No.827 of 2013. In the affidavit filed in support of the said I.A., the defendants 2, 3 and 4 would after narrating the facts and setting out the defense pleaded by their father, simply contend that their previous counsel had not informed them about the proceedings of the Court and they were totally unaware of the same. They would contend that it is only on receiving notice from the Advocate Commissioner on 02.09.2021 that they came to know about the decree. Therefore, there is a delay of 2171 days in filing the application to set aside the ex-parte decree and the same



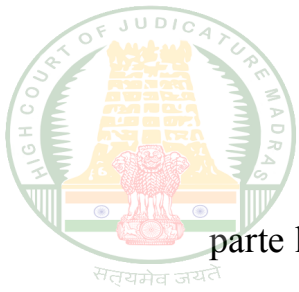
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has to be condoned.

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6.The plaintiffs have filed a counter affidavit to this petition in which they have given the sequence of events in the above suit and the fact that the defendants have always been represented by counsel and the contention that they were informed was rather strange. The plaintiffs had submitted that the present petition has been filed six years after the preliminary decree. Hence, they sought for a dismissal of the application.

7.The learned Judge after taking note of the fact that the defendants were represented by counsel and had been participating in the proceedings however goes on to state that the presence of the counsel will not impute knowledge to the party especially an illiterate litigant and therefore came to the conclusion that the defendants had kept them in the dark about the proceedings. Further, the learned Judge would hold in favour of the defendants on the ground that they have filed written statement which would only go to show that they did not intend to drag on the proceedings and to compensate the plaintiffs for litigation expenses incurred by them for defending the suit. The application for condoning delay of 2171 days in filing the petition to set aside the ex-



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parte has been allowed on cost of Rs.5,000/-. Aggrieved by the same, the plaintiffs are before this Court.

8.The learned counsel M/s.Vasudha Thigarajan appearing on behalf of the petitioners/plaintiffs would submit that the trial Court has totally misdirected itself. There was a delay in filing the application to set aside the ex-parte decree however the delay is sought to be brushed aside by holding that the Advocate engaged by the defendants had not kept them apprised of the details of the case. She would submit that this is nothing but a special pleading in favour of the defendants. She would rely upon an un-reported judgment of the Hon'ble Supreme Court in ***Civil Appeal No.317 of 2025 H.Guruswamy Vs. A.Krishnaiah*** with particular emphasis on paragraph Nos.15 and 16 of the said judgement which reads as follows:-

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



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14. *We are constrained to observe that the High Court has exhibited complete absence of judicial conscience and 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 fides of the explanation offered by the party seeking*



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condonation. It is only if the sufficient cause assigned by the litigant and the 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.

9.M/s.T.Nagin Chella Kaushik, the learned counsel appearing on behalf of defendants on the other hand would submit that the defendants are illiterate persons who have not been properly guided by their counsels and that the counsels have acted on their own accord. He would therefore submit that the Court below was right, in the interest of justice, in allowing the application. He would also rely upon the judgments of the Hon'ble Supreme Court reported in **1981 2 SCC 788 Rafiq and another Vs. Munshilal and others**, **1998 7 SCC 123 N.Balakrishnan Vs. M.Krishnamurthy** and unreported judgement of the Hon'ble Supreme Court in arising from **SLP (Civil) No(s) (c) 24443 of 2024 Kumari Sahu Vs. Bhubanananda Sahu**.

10.Heard the learned counsels on either side and perused the records.



WEB COPY 11.A perusal of the original records, which have been summoned by this Court from the trial Court, would indicate that the suit C.S.No.174 of 2000 was originally filed as an indigent person by the plaintiffs in application No.2312 of 1997 before this Court. After contest and after getting the report from the Thasildar, the plaintiffs were permitted to sue as indigent persons by order dated 10.02.2000. The suit was thereafter numbered as C.S.No.174 of 2000. The suit was originally instituted only against Pandurangan, the father of the defendants 2 to 4. He was represented by counsels L.Mohan and K.Srinivasan who not only filed a counter in the application to sue as indigent person but also filed a detailed written statement. While the suit was pending before this Court the sole defendant died on 21.07.2002 and defendants 2 to 5 were brought on record as his legal representatives. At this juncture, the suit was transferred to the file of the III Additional City Civil Court, Chennai and renumbered as O.S.No.827 of 2013. One Raja Senthoo Pandian, C.Subramanian and R.Saranya had filed vakalath for defendants 2 to 4 in the year 2013. The vakalath is dated 30.10.2013. The records also contain a vakalath dated 23.02.2015 filed on behalf of defendants 2 to 4 by Raja Senthoo Pandian, C.Subramanian and R.Saranya on 08.02.2019.

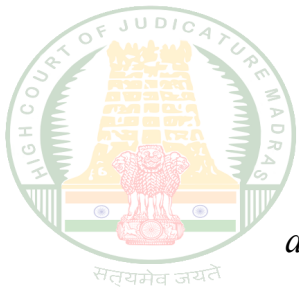


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Yet another vakalath dated 08.02.2019 filed by C.Subramanian, K.Manikandan and K.Hari Shankar for the very same defendants is also

available in the case bundle. It is also seen that on 08.02.2014 the defendants 2 to 5 were set ex-parte. Ultimately, an ex-parte judgment and decree came to be passed on 11.09.2015. Thereafter, the plaintiffs have filed I.A.No.2 of 2019 for passing of final decree by appointing an Advocate Commissioner to demarcate the property by metes and bounds. The defendants were represented by their Advocates C.Subramanian, K.Manikandan and K.Hari Shankar. Even in these proceedings since counter was not filed the second defendant was set ex-parte on 19.11.2019 and it also appears that third and fourth defendants were set ex-parte on 16.03.2021 as counter was not filed despite two years having passed from the date of the filing of the application for final decree. On 15.04.2021 the application was allowed by appointing an Advocate Commissioner. It is also informed that the Commissioner has submitted his interim report. It is only thereafter, that is, on 20.09.2021 that the application was filed for setting aside the ex-parte decree. It would be apposite to just extract the reasons given for condoning the delay which has been set out in paragraph No.9 of the affidavit is as follows:-

9.I most respectfully submit that since our previous



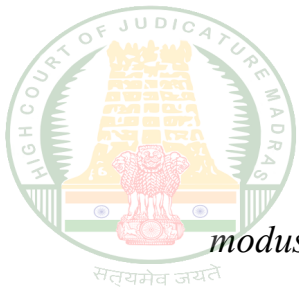
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advocate did not inform about the proceedings of the court, we are totally unaware of the orders of the Court. Moreover, we illiterate and we have been left in lurch by our previous counsel. We know knowledge of this suit only after receiving the notice of the Advocate Commissioner dated 02.09.2021. Hence, there was a delay of 2171 days in filing this petition before this Court. It is neither willful nor wanton but only due to the above said circumstances. If the delay is not condoned and the petition not taken then the petitioners/defendants would be put to hardship and monetary loss. However, no prejudice would be caused to the respondents/plaintiffs.

12. There is absolutely no explanation for the delay of 2171 days except for stating that the Advocate had not informed them about the proceedings. It has also to be borne in mind that the defendants had been set ex-parte on 18.02.2014 and an ex-parte decree came to be passed on 11.09.2015. Once again when the final decree proceedings were filed in 2019, the defendants have entered appearance through counsel on 08.02.2019 and till 2021 have not taken steps to set aside the ex-parte decree. Despite the fact that they had knowledge of the preliminary decree and had been participating in the final decree proceedings till they were set ex-parte. The defendants have adopted the very same



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modus operandi of even entering appearance and later remaining ex-

parte both in the preliminary decree as well as in the final decree. The

learned Judge has taken note all these factors, however he has sought to

brush it aside by simply accepting the statement made by the defendants

in their affidavit that they have not been kept informed by their counsel.

The learned Judge has failed to appreciate that once a party entrusts a

brief to his counsel he has to follow and verify the stages of the case. If

the counsel had really not protected the interest of the party, the party

would have initiated proceedings against the counsel which in the instant

case has not been done. The learned Judge has sought to justify his order

by stating that the counsel for the defendant has made a no objection

endorsement without instructions of the parties. These applications are

innocuous and formal applications for bringing on record the legal

representatives of the deceased third plaintiff and the consequential

amendment applications. For two years after the filing of the final decree

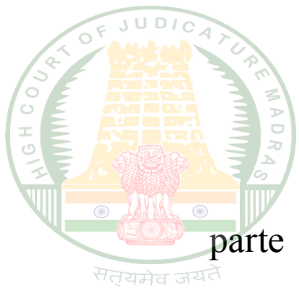
proceedings the defendants by participating in the proceedings has given

out to the plaintiffs that they do not intend to challenge the preliminary

decree and were contesting only the final decree proceedings. The

defendants were originally set ex-parte on 18.02.2014 and till the ex-

parte decree was passed they had not taken any steps to set aside the ex-



partie decree. Even in the judgment that has been relied upon by the learned counsel for the defendants in **1998 7 SCC 123 N.Balakrishnan**

Vs. M.Krishnamurthy, the Hon'ble Supreme Court had observed as follows:-

Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. the object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.



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13.In the recent judgment of the Hon'ble Supreme in ***Civil Appeal***

No.317 of 2025 H.Guruswamy Vs. A.Krishnaiah where also the delay

was 2200 days. The learned Judges went on to observe as follows:-

13. We are at our wits and to understand why the High Court overlooked all the aforesaid aspects. What was the good reason for the High Court to ignore all this? Time and again, the Supreme Court has reminded 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.Considering the facts on hand the application for condoning the delay is totally bereft of reasons. The defendants have not even pleaded a sufficient cause. The learned Judge has simply condoned the delay on the ground that the defendants have not been kept informed by their counsel when the said statement has not been proved. Therefore, in the light of the above discussion, the order challenged before this Court has to necessarily be set aside. Consequently, the Civil Revision Petition is allowed. The order passed by the III Additional City Civil Court, Chennai, in I.A.No.5 of 2021 in O.S.No.827 of 2013 is set aside.



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WEB COPY 15. Accordingly, the Civil Revision Petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

26.02.2025

Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
ep

To
The III Additional Judge,
City Civil Court, Chennai.



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