



C.R.P.[NPD].Nos.31 to 35 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 28.01.2025

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.[NPD] Nos.31 to 33 of 2025

Haji H.A.Kareem (Deceased)
Rep. by his legal representatives

- 1.K.Noorjahan
- 2.K.Amrin Sultana
- 3.K.Faizullah

.. Petitioners in all C.R.Ps

Vs.

H.S.Tajudeen (Deceased)
H.S.Ismail (Deceased)
Mahaboobibi (Deceased)
1.T.Ahamed Basha
2.T.Anwar Basha
3.T.Rafi
4.T.Turabuddin
5.T.Ayub
6.T.Aminudeen
F.Zaithoon Beevi (Deceased)
7.F.Zarina Beevi
8.T.Ashrafunnisa
9.T.Haseena Begum

.. Respondents in all C.R.Ps

[Cause title accepted vide Court order dated
13.12.2024 made in C.M.P.No.28512,
28509 & 28514 of 2024 in
C.R.P.SR.Nos.145178, 145179 & 145180
of 2024 by NSKJ]



C.R.P.[NPD].Nos.31 to 35 of 2025

Prayer in C.R.P.[NPD].No.31 of 2025: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decretal order in I.A.No.1 of 2021 in I.A.S.R.No.13426 of 2021 in I.A.No.12358 of 2018 in O.S.No.9139 of 1995 dated 05.04.2024, passed by the VIII Asst. City Civil Court, Chennai.

Prayer in C.R.P.[NPD].No.32 of 2025: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decretal order in I.A.No.2 of 2021 in I.A.S.R.No.13430 of 2021 in I.A.No.4982 of 2018 in O.S.No.9139 of 1995 dated 05.04.2024, passed by the VIII Asst. City Civil Court, Chennai.

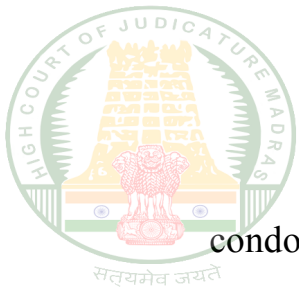
Prayer in C.R.P.[NPD].No.33 of 2025: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decretal order in I.A.No.3 of 2021 in I.A.S.R.No.13428 of 2021 in I.A.No.4983 of 2018 in O.S.No.9139 of 1995 dated 05.04.2024, passed by the VIII Asst. City Civil Court, Chennai.

In all C.R.Ps

For Petitioners : Mr.K.Manimaran
For Respondents : Mr.A.Hari

COMMON ORDER

Challenging the impugned order, dated 05.04.2024, rejecting the applications in I.A.Nos.1 to 3 of 2021 filed by the petitioner herein, to



C.R.P[NPD].Nos.31 to 35 of 2025

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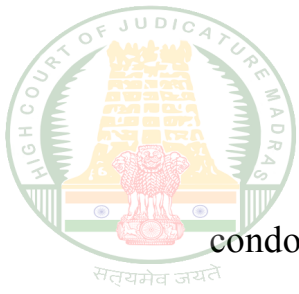
condone the delay of 4623 days in filing the application under Order 9 Rule 9 CPC, the present Civil Revision Petitions have been filed.

2.A suit in O.S.No.9139 of 1995 has been originally filed by the petitioner's father for partition of suit schedule property. A preliminary decree has been passed on 25.04.1996 based on the compromise memo. Subsequently, a final decree has also been passed on 26.04.1996. Thereafter, to engross the final decree, the parties have to submit Non-Judicial Stamp Papers. However, both the parties failed to do the same. Thereafter the applications were taken out in I.A.No.4982, 4983 and 12358 of 2018 to condone the delay of 4623 days in filing the application under Order 9 Rule 9 CPC and also to bring the legal heirs of the plaintiff and the defendants on record. The said applications were dismissed for default on 06.06.2019 and 12.06.2019. Therefore, to restore those applications, the petitioners filed an applications in I.A.Nos. 1 to 3 of 2021. However, the trial Court dismissed those applications also. Challenging the same, these Civil Revision Petitions have been filed.



WEB COPY 3.Learned counsel appearing for the respondents submitted that the respondents have no objection in allowing the present petitions.

4.It is not in dispute that the suit filed for partition was decreed preliminarily in terms of compromise entered between the parties vide judgment dated 25.04.1996 and pursuant to the same, a final decree was also passed on 26.04.1996. Thereafter, it appears that parties were sent notice, calling upon them to deposit required non-judicial stamp papers in order engross the final decree. But unfortunately, the parties have failed to deposit the non-judicial stamp papers and the matter has been kept pending for years together. However, after getting the knowledge of the suit proceedings and the stage of final decree proceedings, the petitioners have moved applications to implead the legal heirs of the deceased parties in the suit and to extend the time to deposit non-judicial stamp papers, which were dismissed for default and again, the petitioners moved applications for restoration of the applications that were dismissed for default and as there was delay in filing the same, they also moved applications, seeking to



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condone the delay. These applications were also dismissed by the Court below.

5.It is pertinent to note that the final decree in a partition suit will be drawn up only on depositing of necessary stamp papers and the said final decree would be engrossed on the stamp paper. It is only thereafter the said final decree becomes executable and the parties can enjoy the fruits of the decree. Therefore, failure to file stamp papers can delay the final decree's execution, it doesn't automatically invalidate or deny the rights of the parties already decided by virtue of the preliminary decree. Further, a decree is a permanent record of Court to register and hence, no limitation can be prescribed. In **“Shub Karan Bubna vs. Sita Saran Bubna & Ors.”** reported in (2009) 9 Supreme Court Cases 689, the Hon'ble Supreme Court has held that a preliminary decree of partition does not have the effect of disposing of the suit, and a suit continues to remain pending until partition by metes and bounds takes place and a final decree is passed. As a result, upon passing the preliminary decree, the trial Court did not become *functus officio*. Therefore, until the final decree is passed, the suit continues. Hence,



C.R.P[NPD].Nos.31 to 35 of 2025

it is the duty of the trial Court to draw the final decree, particularly in a partition suit, where all the parties are considered as decree holders and when the parties, even though have come forward seeking to pass final decree, it is incumbent upon the trial Court to entertain the same without rejecting the same on technicalities.

6.In the light of the above discussion, the orders, dated 05.04.2024, passed in I.A.Nos.1 to 3 of 2021 by the Court below are hereby set aside. Consequently, the trial Court is directed to entertain the applications filed by the parties and engross final decree in accordance with law after affording an opportunity to the parties.

7.Accordingly, the present Civil Revision Petitions are closed. No costs.

28.01.2025

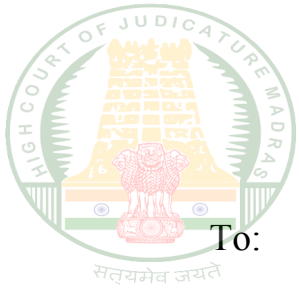
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Index : Yes/No

Internet: Yes/No

Speaking/Non-Speaking Order

6/8



C.R.P[NPD].Nos.31 to 35 of 2025

To:

1. The VIII Asst. City Civil Court,
Chennai.



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C.R.P.[NPD].Nos.31 to 35 of 2025

N.SATHISH KUMAR, J.

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C.R.P.[NPD]Nos.31 to 33 of 2025

28.01.2025