



A No.692 of 2025

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-07-2025

CORAM

THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN

A No.692 of 2025 in

T.O.S.No.42 of 2006

R.Sivaraman
No.21a, Xi Avenue, Ashok Nagar,
Chennai-600 83.

Applicant(s)

Vs

Mrs.Chitra Jayaraman and 2 others
1 to 3 residing at Kamadhenu, No.8, Binny
Road, Chennai 600 086. and 2 Others

Respondent(s)

For Applicant(s):

Mr.R.Rajarajan

For Respondent(s):

ORDER

This application has been filed to condone the delay of 355 days in filing petition to set aside the order dated 31.01.2023 by which order, the learned single Judge had dismissed the Testamentary and Original suit for non prosecution.

2. A perusal of the order of the learned Single Judge shows that there was no representation on behalf of the applicant/plaintiff and also interestingly no appearance on behalf of the respondents/defendants.



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Neither counsel appeared before the Court. But there are three other suits which are pending one for declaration that the plaintiff therein is the absolute owner of the suit schedule property which has been filed on the basis of the Will which is sought to be proved in T.O.S.No.42 of 2006 and other in C.S.No.147 of 2018 for permanent injunction to protect possession again filed by the plaintiff and the third in C.S.No.827 of 2005 filed by the defendants in the Testamentary Original Suit seeking declaration of title.

3. All the issues can be examined only when the Will is proved or disproved in manner known to law. Opportunity will have to be given and the Court has a responsibility to adjudicate on the genuineness of a Will, if Probate or Letters of Administration is sought.

4. The learned counsel for the respondents/defendants raised an objection stating that the only reason given is that the counsel had given change of vakalat and that the applicant was not aware about the same. It must be stated that the applicant had been named as the executor under Will and strictly not the beneficiary of the Will and is not a party in other



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three suits in C.S.No.827 of 2005, Tr.C.S.No.147 of 2018 and C.S.No.686 of 2014. He has a responsibility to ensure that the Will is subjected to proof and tested in judicial process.

5. It is also to be noted that though counter has been filed raising objections to the delay, the counsel for the respondents had also not appeared on 31.10.2023. Both the counsels had not appeared. In such circumstance, it is only appropriate that the Court restores status quo ante and examines the validity of the Will or the proof of the Will. This application is only for condoning the delay. Delay is condoned and the application stands allowed.

6. Registry is directed to list the application filed to set aside the order dated 31.01.2023, if it is otherwise in order on 21.07.2025.

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vum



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C.V. KARTHIKEYAN,J.,

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