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CMP.No.8885 of 2025 in A.S.No.349 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2025

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

CMP.No.8885 of 2025

in

A.S.No.349 of 2018

Cynthia Thyagarajan (Deceased)

1. Shanthi Venkatramani

... Petitioners / Appellants

Vs.

D.Anand Harry Christy

... Respondent / Respondent

PRAYER IN CMP.No.8885 of 2025 : This Civil Miscellaneous Petition filed under Order XLI Rule 19 R/W Section 151 of CPC, praying to restore the above Appeal Suit in A.S.No.349 of 2018 on the file of this Court, which was dismissed for default on 21.09.2023.

For Petitioners : Mr.V.Srikanth

For Respondent : Mr.M.Boopathy

ORDER

This Civil Miscellaneous petition is filed by the petitioners / appellants seeking to restore the above appeal suit in A.S.No.349 of 2018 which was dismissed for default on 21.09.2023.

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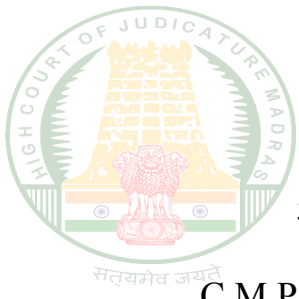


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2. Heard Mr.TV.Srikanth, learned counsel appearing for the petitioners / appellants and Mr.M.Boopathy, learned counsel appearing for the respondent.

3. The learned counsel appearing for the petitioners submits that the petitioners filed this application along with CMP.No.1904 of 2025 praying to condone the delay of 445 days in filing this petition [petition to set aside the dismissal order dated 21.09.2023]. The said petition was allowed on 01.04.2025, after hearing both sides on merits. This is a consequential petition.

4. Per contra, learned counsel appearing for the respondent submits that in this case the respondent / plaintiff filed an application for passing final decree before the Trial Court. In the said application an Advocate - Commissioner was appointed to divide the suit property as per the preliminary decree. As per the order of the Trial Court, the respondent / plaintiff has paid a sum of Rs.10,000/-to the Advocate Commissioner as his / her remuneration. Accordingly, he prays to dismiss this Civil Miscellaneous Petition.



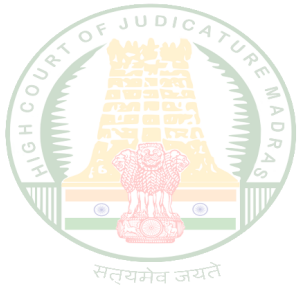
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5. This Court has considered both side submissions.

C.M.P.No.1904 of 2025 had been allowed and thereby delay of 445 days was condoned by this Court. Hence, this petition is a consequential one. However, considering the fact that respondent / plaintiff has incurred a sum of Rs.10,000/- as remuneration to the Advocate - Commissioner, this Court is of the view that the some balance to be struck off in this regard. Hence, in the interest of justice, this Court does incline to allow the petition, however subject to payment of costs of Rs.5000/- payable by the petitioner herein to the respondent / plaintiff.

6. Accordingly, this petition is allowed on payment of costs of Rs.5000/- payable by the petitioner to the respondent / plaintiff within one week from today.

7. While dictating the above order, the counsel for the petitioner pays a sum of Rs.5000/- to the respondent / plaintiff counsel. The learned counsel for the respondent / plaintiff has made endorsement to that effect. In view of the endorsement made by the learned counsel for the respondent / plaintiff, this Civil Miscellaneous Petition is allowed.



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R.SAKTHIVEL, J.

8. Registry is directed to restore the A.S.No.349 of 2018 and post the appeal suit on 04.07.2025 for final hearing.

26.06.2025

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Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No

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