



CRP(MD). No.208 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 25/06/2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**CRP (MD). No.208 of 2022
and CMP(MD) No.934 of 2022**

Joshephine

... Petitioner

Vs

1. Backiyalakshmi
2. Muthukumar
3. Panjavarnam,(Died)
4. Roslin
5. Annaraj
6. Rajeshwari
7. Parameshwari

... Respondents

(Respondents 4 to 7 are brought on record
as legal heirs of the deceased 3rd respondent
vide order dated 20.04.2022 in CMP(MD) No.3632 of 2022)

PRAYER :-Civil Revision Petition filed under Section 115 of the Code
of Civil Procedure against the fair order and decreetal order dated
07.12.2021 made in IA No. 1 of 2019 in Unnumbered Appeal on the file
of Subordinate Judge, Sankarankovil.

For Petitioner : Mr.P.Thiyagarajan

For Respondents : Mr. V.George Raja for R2



CRP(MD). No.208 of 2022

ORDER

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The Civil Revision Petition is filed against the fair order and decretal order dated 07.12.2021 made in IA No. 1 of 2019 in Unnumbered Appeal on the file of Subordinate Judge, Sankarankovil.

2. The learned counsel for the petitioner would submit that the petitioner is the 2nd defendant in OS No.109/1998. The first respondent/plaintiff filed the said suit for partition and the said suit was decreed and preliminary decree was passed on 09.09.2003, against which, an appeal was filed in AS No.157/2004 and the appeal was dismissed on 28.12.2005, against which the petitioner preferred a second appeal in SA(MD) No.669 of 2011 before this Court, wherein, interim stay was granted on 08.01.2014 for passing of final decree and the second appeal was dismissed on 11.10.2018. However, before the trial Court, an application in IA No.755 of 2010 was filed for passing final decree on 24.08.2009. While interim stay was granted, final decree came to be passed on 26.03.2015. Challenging the said final decree in IA No. 755/2010, the petitioner filed an application in which he has also filed an application in IA No.1/2019 to condone the delay of 1561 days in



CRP(MD). No.208 of 2022

preferring the said application, ie., with a delay of four years and the application to condone the delay came to be dismissed. Challenging the said dismissal, the petitioner is before this Court.

3. The learned counsel for the petitioner would submit that admittedly preliminary decree was confirmed by this Court in the second appeal and metes and bounds of the suit property is to be shared between the parties to the suit proceedings. However, without any discussion, the Advocate Commissioner was appointed by the Court below to decide the share of the property, which adversely affected the interest of the petitioner. Therefore, the petitioner filed an application against the same, however, with a delay condonation petition and the said petition was dismissed on the ground that the delay has not been properly explained. Since the petitioner was ill at that point of time, she could not prefer the application in time and hence, he prays for appropriate direction. The learned counsel would further submit that the petitioner would abide by any condition imposed by this Court and the petitioner is also ready to pay reasonable cost.



CRP(MD). No.208 of 2022

WEB COPY

4. Per contra, the learned counsel for the 2nd respondent would submit that preliminary decree was passed in the year 2003 and first appeal was dismissed in the year 2005. The second appeal was preferred only in the year 2018 and prior to that, the respondent has filed an application for passing of final decree in IA No.755/2010 and initially this Court granted interim stay on 08.12.2014. Subsequently, the interim order was not extended and in the absence of interim order, final decree was passed and accordingly metes and bounds were shared between the parties and the parties are enjoying the property now and in order to disturb the said possession of the parties, the present application to set aside the final decree came to be filed, however, with a delay of four years and hence, the trial Court rightly dismissed the said application and hence, prays for dismissal.

5. I have considered the rival submissions and perused the materials available on record.

6. It is not in dispute that filing of suit and the suit came to be decreed on 09.09.2003 and a preliminary decree has also been passed on



CRP(MD). No.208 of 2022

the same day. Challenging the said judgment and decree, an appeal suit came to be filed, which was also dismissed on 28.12.2005. A second appeal, which was filed aggrieved by the dismissal of the appeal suit, was also dismissed vide judgment dated 11.10.2018. In the second appeal, a stay has been passed for passing of final decree as early as on 08.01.2014, that too for a period of two weeks. Subsequently it has neither been extended nor the second appeal was heard as on 26.03.2015. Therefore, in the absence of any interim order as on 26.03.2015, final decree came to be passed by the Court below. Subsequently, the second appeal has also been dismissed confirming the order of the courts below on 11.10.2018. When there was no stay in operation, rightly the trial Court has passed the final decree on 26.03.2015.

7. Further as per the order of the trial Court in the interlocutory application that the petitioner was aware of the passing of final decree and she was also served with the report of the Advocate Commissioner. When that be so, the petitioner cannot now turn around and contend that she was not aware of those facts and hence, there occurred a delay of 1561 days in preferring the said application. Considering all these



CRP(MD). No.208 of 2022

aspects, the trial Court has rightly dismissed the said application, which does not warrant any interference at the hands of this Court. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

25.06.2025

NCC : Yes/No
Index : Yes/No
RR

TO

1.The Subordinate Judge, Sankarankovil.

2.VR Section

Madurai Bench of Madras High Court, Madurai.



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CRP(MD). No.208 of 2022

M.DHANDAPANI,J

RR

**ORDER
IN
CRP(MD) No.208 of 2022**

Date : 25/06/2025