

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2025

WEB COPY

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.R.P.(PD)(MD)Nos.1543 & 1601 of 2021

and

C.M.P.(MD).Nos.8467 & 8694 of 2021

S.Madasamy

...Petitioner
in both petitions

Vs.

1.P.Lakshmiammal

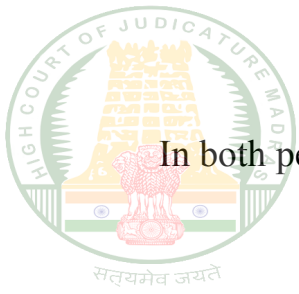
2.P.Thangapandi

3.P.Suresh

...Respondents
in both petitions

PRAYER IN CRP.(MD).No.1543 of 2021: Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records of the learned I Additional Sub Judge, Madurai, made in I.A.No.162 of 2017 in O.S.No.902 of 2001 and set aside the petition order dated 19.07.2019 and allow the Civil Revision Petition.

PRAYER IN CRP.(MD).No.1601 of 2021: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 20.07.2017 made in I.A.No.148 of 2016 in O.S.No.902 of 2001 on the file of the learned I Additional Sub Judge, Madurai and allow the Civil Revision Petition.



WEB COPY



In both petitions

For Petitioner : Mr.R.Baskaran,
Senior Counsel
for Ms.P.Pranavi

For R-1 to R-3 : No appearance

* * * * *

COMMON ORDER

These petitions have been filed seeking orders to set aside the orders made in I.A.Nos.162 of 2017 and 148 of 2016 in O.S.No.902 of 2001 dated 19.07.2019 and 20.07.2017 respectively, on the file of the learned I Additional Sub Judge, Madurai.

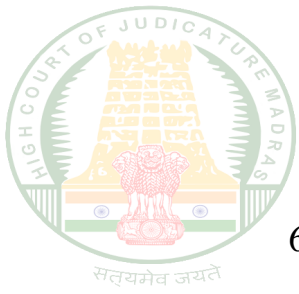
2. The petitioner is a plaintiff in O.S.No.902 of 2021 before the learned Sub Judge, Madurai, seeking for the relief of specific performance. The said suit was decreed as *ex parte* decree on 12.09.2002. To execute the said decree, the petitioner filed an Execution Petition in E.P.No.228 of 2007 and the counter was also filed by the respondent on 05.11.2008. Thereafter, the respondents / defendants filed I.A.Nos.148 of 2016 and 162 of 2017 seeking condonation of delay and set aside the *ex parte* decree dated 12.09.2002 and the said petitions were allowed on 20.07.2017 and 19.07.2019. Challenging the same, the petitioner filed these Civil Revision Petitions.



3. The learned Senior Counsel appearing for the petitioner would submit that, admittedly, the petitioner entered into a sale agreement with the first respondent's husband, namely, Pitchaimani, on 02.08.2000 for a total sale consideration of Rs.57,000/-. A sum of Rs.40,000/- was paid as an advance, and it was agreed that the balance amount of Rs.17,000/- would be paid at the time of execution of the sale deed. However, the first respondent's husband failed to honour the terms of the sale agreement. Consequently, the petitioner filed a suit in O.S.No.902 of 2001. It is pertinent to note that the first respondent's husband died on 08.09.2000, prior to the filing of the suit. The said suit was decreed on 12.09.2002. Thereafter, the petitioner filed an Execution Petition in the year 2007, in which all the respondents entered appearance and filed their counter. However, the respondents belatedly filed applications in the years 2016 and 2017 seeking to condone the delay and set aside the *ex parte* order after a lapse of 13 years. Such an inordinate delay is not liable to be condoned. Further, the delay condonation petition was allowed without issuing any notice to the petitioner, which is procedurally unsustainable.

4. Though the names of the respondents were printed in the cause list, none appears on behalf of the respondents.

5. Considering the pendency of the case, this Court is inclined to dispose of the case with the available records.



6. The facts of the present case are not in dispute. Admittedly, the husband of the first respondent, namely Pitchaimani, allegedly entered into a sale agreement with the petitioner on 02.08.2000, for a total sale consideration of Rs.57,000/-, out of which a sum of Rs.40,000/- was paid as advance, and the balance amount of Rs.17,000/- was agreed to be paid at the time of execution of the sale deed. It is equally admitted that the said Pitchaimani died on 08.09.2000, within thirty-five days from the date of the agreement. The first respondent has alleged that the petitioner is a moneylender and that the transaction in question was, in fact, a money lending transaction between the deceased and the petitioner. Subsequently, within four months from the date of the said agreement, the petitioner filed a suit against the respondents and obtained an *ex parte* decree on 12.09.2002. It is further admitted that the first respondent lost her husband and was in a period of mourning, typically lasting one year in customary practice. Moreover, the second and third respondents were minors both at the time of the death of the deceased and at the time of institution of the suit.

7. Though there was a huge delay in filing the set aside and condonation applications, however, no one can allow to suffer the *ex parte* decree, thereby, now the legal heirs have come forward to set aside the *ex parte* decree and to further proceed with the Court proceedings. It is also relevant to note that the



notice was refused to be received by the petitioner, and such an endorsement was made by the trial Court on 08.08.2016. Even though this Court finds that there was a huge delay in filing the applications, however, no one can allow the *ex parte decree* to remain in force when the proceedings are vitiated by procedural irregularities and lack of proper representation.

8. In the result, the orders passed by the trial Court in I.A.Nos.162 of 2017 and 148 of 2016 in O.S.No.902 of 2001 dated 19.07.2019 and 20.07.2017 respectively, on the file of the learned I Additional Sub Judge, Madurai, need not to be interfered with and accordingly, the Civil Revision Petitions stand dismissed. The trial Court is directed to decide the suit in O.S.No.902 of 2001 on merits and in accordance with law as expeditiously as possible as per the seniority of the case. No costs. Consequently, the connected miscellaneous petitions are closed.

13.06.2025

Internet:Yes/No
Index:Yes/No
TSG

To
1.The Sub Judge, Madurai.

2.The I Additional Sub Court, Madurai.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY

C.R.P.(PD)(MD)Nos.1543 & 1601 of 2021



M.DHANDAPANI, J.

TSG

C.R.P.(PD)(MD)Nos.1543 & 1601 of 2021

13.06.2025