



C.R.P.(MD)No.1947 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.08.2025

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.R.P.(MD)No.1947 of 2025

and

C.M.P.(MD)No.11178 of 2022

1.Rajam
2.Rajathi

...Petitioners

Vs.

A.Periaraj

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, praying to set aside the Fair and Decreetal order dated 31.01.2025 in I.A.No.10 of 2024 in O.S.No.1157 of 2024, on the file of the Sub Court, Rajapalayam and allow the Civil Revision Petition.

For Petitioners : Mr.K.Sekar

For Respondent : Mr.M.Thirunavukkarasu



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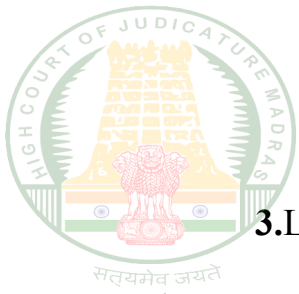


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ORDER

This petition has been filed seeking to set aside the Fair and Decreetal order dated 31.01.2025 in I.A.No.10 of 2024 in O.S.No.1157 of 2024, on the file of the Sub Court, Rajapalayam.

2.Learned Counsel for the petitioners would submit that the petitioners are the third and fourth defendants in O.S.No.1157 of 2024 and the said suit was filed by the petitioner's father first respondent / plaintiff for declaration to declare that the suit schedule property exclusively belongs to the petitioner and for a direction to the sixth respondent to hand over possession, also to declare the power of attorney executed by 1 to 4 defendants in favour of the fifth defendant and subsequent sale deed executed by the fifth defendant in favour of the sixth defendant as null and void. However, the petitioners 3 and 4 were set ex-parte on 13.08.2013. Thereby, the petitioners filed I.A.No.10 of 2024, to set aside the ex-parte decree with delay petition and the same was dismissed on the ground that there is no proper explanation for delay in filing the restoration petition. Challenging the same, the present Civil Revision Petition came to be filed.



3.Learned Counsel for the petitioners would submit that the issue is no longer *res integra*, wherein this Court by its decision in the case of ***Rajasekar Vs. Govindammal*** reported in 2020 (6) CTC 724, has clearly held that Article 137 of the Limitation Act does not apply to an application under Order 9 Rule 7 of CPC and the same can be filed at any time before judgment is delivered in the suit. Though, the suit was filed in the year 2013, however, the suit has not attained finality. The petitioners have rightly filed an application to set aside the ex-parte decree against them and the same was rejected.

4.Per contra, learned Counsel for the respondent would submit that as per Article 137 of the Limitation Act, the period of filing the set aside ex-parte order application is three years. However, the present petition is beyond three years and the trial Court has rightly rejected the said application. Accordingly, he prays for appropriate orders.

5.The facts in the present case are not in dispute. As rightly pointed out by the learned Counsel for the petitioners, the issue in the present Civil Revision Petition is no longer *res integra*. This Court by its decision in the case of ***Rajasekar Vs. Govindammal*** reported in 2020 (6) CTC 724, in paragraph No.4 has held as follows:



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*“24.I, therefore, find that those Judgments, viz., the Judgment in **Visalakshi v. Umapathy**, 2015 (5) CTC 67, Judgement in **G.Krishnasamy v. G.Seenivasan and another**, C.R.P.(MD)No.2819 of 2018 (PD), dated 4.6.2019, Judgment in **Ramdoss v. Mohan and others**, C.R.P.(PD)No.2412 of 2016, dated 23.08.2016, cannot be held to be good law, inasmuch as, they are in conflict with the decisions of the Hon'ble Supreme Court in **Sangram Singh v. Election Tribunal, Kotah and others**, AIR 1955 SC 425 and **Arjun Singh v. Mohindra Kumar and others**, AIR 1964 SC 993. For the foregoing reasons, I conclude that Article 137 of the Limitation Act, does not apply to an Application under Order 9, Rule 7 of the Code of Civil Procedure and the same can be filed at any time before the Judgment is delivered in the Suit or proceeding.”*

6.In view of the aforesaid decision, the order passed by the trial Court in I.A.No.10 of 2024 in O.S.No.1157 of 2024, is set aside and the trial Court is directed to restore the suit as regards the petitioners and dispose of the suit within a period of six [6] months from the date of receipt of a copy of this order.



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7. Accordingly, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

06.08.2025

Internet: Yes/No

Index: Yes/No

MR



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To

- 1.The Sub Court,
Rajapalayam.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI, J.

MR

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