



C.R..P.(NPD)(MD).Nos.2196 and 2197 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(NPD)(MD)Nos.2196 and 2197 of 2024

and

C.M.P(MD) Nos.12501 and 12502 of 2024

In both petitions:

1. Muthulakshmi

2. Sudhagar

3. Madhankumar

... Petitioners/Respondents 6 to 8

Respondents 6 to 8 /Defendants 6 to 8

Vs.

1. Eswari

... Respondent/Petitioner

Petitioner/Plaintiff

Chinnammal (Died)

2. Aathaal @ Karupathaal

3. Kaliyathaai

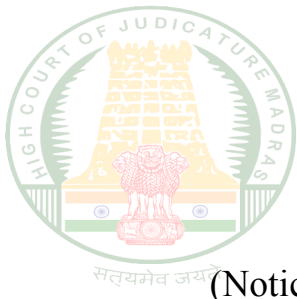
4. Vellathai

Dharmaraj (Died)

... Respondents/Respondents 1 to 5/

Respondents 1 to 5/

Defendants 1 to 5



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(Notice to R3 is dispensed with vide order of this Court dated 09.01.2025 made in C.R.P(MD) Nos. 2196 and 2197 of 2024 respectively)

PRAYER in C.R.P(MD) No.2196 of 2024: Civil Revision Petition filed under Section 115 of C.P.C., to set aside the order dated 08.08.2022 passed in E.A.No.73 of 2020 in E.A.No.401 of 2007 in E.P.No.50 of 2005 in O.S.No. 408 of 2001 on the file of the Principal Subordinate Court, Palani, pending disposal of the Civil Revision Petition.

PRAYER in C.R.P(MD) No.2197 of 2024: Civil Revision Petition filed under Section 115 of C.P.C., to set aside the order dated 08.08.2022 passed in E.A.No.72 of 2020 in E.A.No.249 of 2013 in E.P.No.50 of 2005 in O.S.No. 408 of 2001 on the file of the Principal Subordinate Court, Palani, pending disposal of the Civil Revision Petition.

In both petitions:

For Petitioners	: Mr.C.Arul Vadivel @ Sekar Senior Counsel for Mr.Balaji Thirumoorthy
For R1	: Mr.Anandchandrasekar for Mr.C.M.Marichelliah Prabhu
For R2 and R4	: No appearance



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COMMON ORDER

The defendants 6 to 8 in O.S.No.408 of 2001 on the file of the Principal Subordinate Court, Palani, have filed the present Civil Revision Petitions challenging the order passed in E.A.Nos.72 and 73 of 2020.

2. The first respondent herein had filed the above said suit for the relief of specific performance and an *ex parte* decree came to be passed on 08.03.2005. The decree holder had filed E.P.No.50 of 2005 for execution of sale deed and the Court has executed the sale deed on 03.09.2007.

3. The decree holder had filed E.A.No.401 of 2007 for taking delivery of the property. Pending the said application, the 5th respondent in the said application, namely, Dharmaraj, had passed away. The decree holder has filed E.A.No.249 of 2013 to implead the legal heirs of R5. The said application came to be dismissed by the trial Court on the ground that batta was not paid to the proposed parties. As a consequence, E.A.No.401 of 2007 was also dismissed.



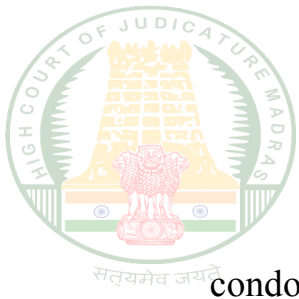
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4. The decree holder has filed E.A.No.72 of 2020 and E.A.No.73 of 2020 to restore E.A.No.249 of 2013 and E.A.No.401 of 2007 respectively. These applications were filed to condone the delay of 1504 days. These two applications came to be allowed by the Executing Court. Challenging the same, the present Civil Revision Petitions have been filed by the defendants 6 to 8.

5. According to the learned Senior Counsel appearing for the revision petitioners/defendants 6 to 8 no proper reasons have been assigned by the decree holder for such a huge delay of 1504 days in restoring E.A.No.249 of 2013 and E.A.No.401 of 2007. The only reason assigned by them is that she is an aged and uneducated lady and she was believing the words of her counsel.

6. The learned Senior Counsel had relied upon the Hon'ble Division Bench judgment of our High Court in **2008 (6) CTC 468 (Union Bank of India, Oppanakara Street, Coimbatore- 641 001 Vs.K.R.Jewellers and others)** wherein, the Hon'ble Division Bench has held that mere allegation of negligence levelled against the counsel cannot be a sufficient reason to

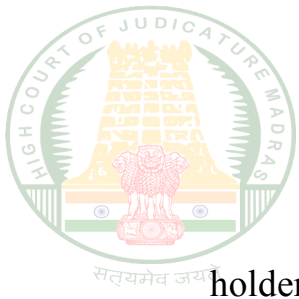


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condone the delay. He also relied upon the judgment of this Court in ***C.R.P (MD) No.798 of 2019 dated 20.12.2023 (Chitravel & Another Vs.Jothimani)*** wherein this Court has rejected the plea of blaming the counsel. The learned Senior Counsel has also relied upon the judgment of the Hon'ble Supreme Court reported in ***2024 INSC 262 (Union of India (UOI) and others Vs. Jahangir Byramji Jeejeebhy (D) through his LR)*** wherein, the Hon'ble Supreme Court has held that the Court should not start with the merits of the main matter while considering the plea for condonation of delay. He also relied upon the judgment of the Hon'ble Supreme Court reported in ***2024 INSC 286 (Pathapati Subba Reddy (died) by L.R.s and Ors.Vs. The Special Deputy Collector (LA))*** wherein the Hon'ble Supreme Court has held that the merits of the case cannot be looked into for the purpose of condoning the delay.

7. The learned Senior Counsel appearing for the revision petitioners by pointing out the order of the trial Court had contended that merely considering the merits of the case in order to render substantial justice, the delay has been condoned by the Execution Court. In such circumstances, when the delay has not been properly explained by the respondent/decreed



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holder, the executing Court ought not to have condoned the delay for the purpose of rendering substantial justice.

8. Per contra, the learned counsel appearing for the respondent/decreed holder had pointed out that the 5th respondent had passed away and his wife was already arrayed as the 6th respondent. Only to implead the other two legal heirs of 5th respondent, E.A.No.249 of 2013 has been filed. Therefore, merely because steps were not taken to implead the other two legal heirs of the 5th respondent, E.A.No.249 of 2013 ought not to have dismissed . As a consequence, E.A.No.401 of 2007 should not have been dismissed. When there was a substantial representation of the estate of 5th respondent, the question of dismissing these two applications would not arise. Only considering the mistake committed by the Court, the trial Court has proceeded to allow E.A.Nos.72 and 73 of 2020 and had condoned the delay and restored the delivery application and the legal heirs application. Hence he prayed for sustaining the order passed by the executing Court.

9. Heard both sides and perused the materials available on record.

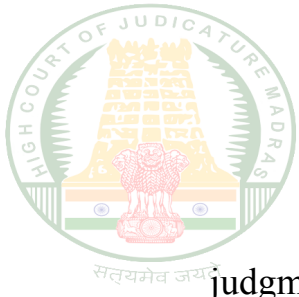


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10. The trial Court has executed the sale deed in favour of the decree holder on 03.09.2007. This has not been challenged by the judgment debtors. Therefore, the right to take delivery of the property has got accrued. For that purpose, the decree holder had to file a delivery application within a period of one year from the date of confirmation of sale deed or he can resort to file an independent suit to take delivery of the property. In the present case, the delivery application has been filed within a period of one year in E.A.No.401 of 2007.

11. In E.A.No.401 of 2007, when the 5th respondent had passed away his wife was already arrayed as 6th respondent in the said application. Therefore, there was a substantial representation of the estate of the 5th respondent. Even, if the other two legal heirs of the 5th respondent were not impleaded, the trial Court is entitled to proceed with E.A.No.401 of 2007. In such circumstances, the decree holder had filed E.A.No.249 of 2013 only by way of abundant caution. In such circumstances, merely because two additional legal heirs of the deceased party are not impleaded, the delivery application ought not have been dismissed. Only considering these facts, the trial Court has proceeded to allow E.A.No.72 and 73 of 2020. Therefore, the



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judgments relied upon by the learned Senior Counsel appearing for the revision petitioners would not be applicable to the facts of the present cases. Considering the above said facts, the trial Court has rightly condoned the delay and restored E.A.No.249 of 2013 and E.A.No.401 of 2007 and there are no merits in these Civil Revision Petitions.

12. Accordingly, these Civil Revision Petitions are dismissed. There shall be no order as to costs. Consequently connected Miscellaneous Petitions stand closed.

07.04.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Principal Subordinate Court,
Palani,
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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