



C.R..P.(NPD)(MD).No.1042 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(NPD)(MD)No.1042 of 2025

and

C.M.P(MD) No.5728 of 2025

Rajendran (died)

1.R.John Bright

2. R.Stella Bai

3. Justin

4. Russel Raj

... Petitioners/Petitioners/
Legal Representatives
of the 1st defendant

Vs.

1. Christopher Paul

2. Rajarethinam

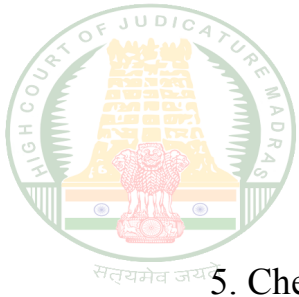
3. Alwin Isac

4. Darwin

... Respondents 1 to 4/
Respondents 1 to 4/
Plaintiffs

Thangappan (Died)

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5. Chellathurai

6. Chellappan

7. Ponnappan

8. Jospeh

9. Baby

Thangavadivu (Died)

Gnanaraj (Died)

10. Abraham

11. Stanly

12. Thanga Nadar

13. Cicil

S/o. Gnanadhas

14. Arputha Jeeva Baby

15. Prema Bami

16. Nirmala Bami

17. Buela Bami

18. Justin Suther

19. Berlin Jose

20. G.Cicil

S/o. Gnanaraj

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21. G.Mohan

22. G.Ivy

23. G.Danie

24. G.Suganthi

25. G.Diana

26. R.John Bright

27. Justin

28. R.Russel Raj

29. R.Stell Bai

30. Agathammal

31. Thanga Rani

32. Kala R.Ani

33. Vijila Rani

34. Geetha Rani

... Respondents 5 to 34/
Respondents 5 to 39/
Defendants 2 to 24

(The respondents 5 to 34 herein are given up since they remained *ex-parte* before the trial Court)



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PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., to set aside the fair and decreetal order dated 04.01.2025 passed in I.A.No.1247 of 2015 in O.S.No.327 of 2002 on the file of the Principal District Munsif Court, Padmanabhapuram, and to allow the Civil Revision Petition.

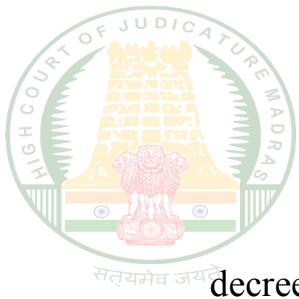
For Petitioners : Mr.R.J.Karthick

For R3 : Mr.S.C.Herold Singh

ORDER

The legal representatives of the first defendant in O.S.No.327 of 2002 on the file of the Principal District Munsif Court, Padmanabhapuram, have filed the present Civil Revision Petition challenging the dismissal of their application to condone the delay of 1875 days in filing an application to set aside the *ex parte* final decree.

2. The above said suit was filed for the relief of partition and a preliminary decree came to be passed on 18.07.2009. The decree holder had filed I.A.No.467 of 2007 for passing of final decree. Pending final decree application, the revision petitioners were set *ex parte* on 17.09.2009 and final



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decree came to be passed on 09.11.2009. Based upon the final decree, the decree holder had filed E.P.No.97 of 2010 and delivery was effected on 31.01.2012. Thereafter, on 19.03.2015 the revision petitioners have filed I.A.No.1247 of 2015 to condone the delay of 1875 days in setting aside the *ex parte* final decree.

3. A perusal of the affidavit filed in support of the above said application reveals that the revision petitioners has contended that the first defendant was not keeping in good health and he was a heart patient. Therefore, he could not contact his counsel to file a counter in the final decree proceedings. The said reason assigned by the revision petitioners was disbelieved by the trial Court and dismissed the application. Challenging the same, the present Civil Revision Petition has been filed.

4. According to the learned counsel appearing for the revision petitioners, the trial court has not properly appreciated the fact that the first defendant is a heart patient and he could not contact his counsel from the year 1996 onwards. In such circumstances, he was not in a position to contact his counsel for filing a counter in the final decree application.



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5. Per contra, the learned counsel appearing for the 3rd respondent/decree holder pointed out that the revision petitioner was set *ex parte* in September 2009, final decree came to be passed in November 2009 and delivery was also taken in January 2012. In such circumstances, the application has been filed much belatedly without assigning proper reasons.

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

7. The only issue that arises for consideration is that whether the revision petitioners have properly explained the delay of 1875 days in filing an application to set aside the *ex parte* final decree.

8. The only reason that was assigned by the revision petitioners is that the first defendant was not keeping in good health and therefore, he could not contact his counsel. The delay is more than 5 ½ years. Therefore, the reason assigned by the revision petitioners was rightly disbelieved by the trial Court.



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9. Considering the fact that already delivery has been effected in the year 2012, this Court does not find any reason to interfere in the order of the trial Court. Accordingly, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

07.04.2025

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

1. The Principal District Munsif Court,
Padmanabhapuram
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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