



CRP.(MD).No.9 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

CRP.PD.(MD).No.9 of 2019

against

I.A.No.91 of 2017

in

A.S.No.(Un-numbered) of 2017

and

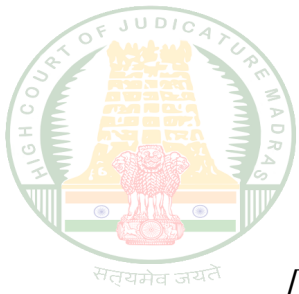
CMP(MD).No.6839 of 2024

- 1.Selvarani
- 2.Sundara Mahalakshmi
- 3.Unnamalai
- 4.Muruganantham

.. Petitioners/Petitioners/Appellants

Vs.

- 1.Selvaraj Reddiar (Died)
- 2.Masanakonar (Died)
- 3.Ganesan
- 4.Navaneethan
- 5.Subbulakshmi
- 6.Shanmugathai(Died)
- 7.Murugan
- 8.Veeralakshmi
- 9.Shankar



CRP.(MD).No.9 of 2019

WEB COPY

[5th respondent is also brought on record as LR of the deceased 1st Respondent vide court order dated 25.07.2024 made in CMP(MD) No.3940 of 2020 in CRP(MD)No.9 of 2019 by RVJ.

Memo dated 22.03.2024 presented before the Court on 22.03.2024, is recorded, as R6 died, and Respondents 7 and 8 who are already on record, are recorded as Lrs of the deceased R6, and there is no need to take steps, vide court order dated 22.03.2024 made in CMP(MD)Nos.3953, 3936 and 3938 of 2020 in CRP(MD)No.9 of 2019 by KMSJ.

Respondents 6 to 8 are brought on records as LRs of the deceased 2nd respondent vide court order dated 25.07.2024 made in CMP(MD)Nos.3935, 3936 and 3938 of 2020 in CRP(MD)No.9 of 2019 by RVJ.

9th Respondent is also brought on record as LR of the deceased 2nd respondent vide court order dated 25.07.2024 made in CMP(MD).No.1913 of 2022 in CRP(MD).No.9 of 2019 by RVJ]

Prayer: This civil revision petition has been filed under Section 115 of the Code of Civil Procedure, 1908 to set aside the fair and decretal order dated 29.08.2018 made in I.A.No.91 of 2017 in A.S.No.(Unnumbered) of 2017 on the file of Sub-Court, Thoothukudi and to allow the petition.

For Petitioners	:	Mr.George Raja for M/s.Ajmal Associates
For R4	:	Mr.S.Sivathilakar
For RR3,5,7 to 9	:	-No Appearance-



CRP.(MD).No.9 of 2019

ORDER

WEB COPY

The appellants in un-numbered first appeal on the file of the Sub-Court, Thoothukudi have filed the present civil revision petition, challenging the dismissal of their application for condoning the delay of 2026 days in representing the first appeal.

2. The revision petitioners herein as plaintiffs have filed O.S.No. 503 of 2007 on the file of the Principal Sub Court, Thoothukudi for the relief of partition and separate possession. After trial, the suit was dismissed on 21.10.2009. The plaintiffs have presented the appeal before the Sub-Court, Thoothukudi in time.

3. The appeal was returned by the trial Court for rectification of certain defects. After rectification the appeal was represented only on 10.10.2017 with a delay of 2206 days in representing the appeal. The appellants have filed I.A.No.91 of 2017 to condone the said delay. The appellants have contended that one Mr.K.Sankarappa Reddiar, advocate had presented the appeal, due to illness he had not attended the Court for so many days and passed away, therefore, the returned the appeal memorandum could not be represented in time.



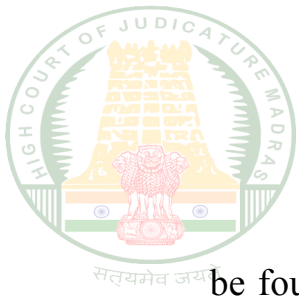
CRP.(MD).No.9 of 2019

WEB COPY

4. The respondents in the appeal have filed a counter contending that the appellants have not furnished any details of the illness of the counsel or the period during which he was sick and therefore, the application has to be rejected. The trial Court has accepted the contentions of the respondent in the appeal and has proceeded to dismiss the condone delay application in filing the revision application. Challenging the same the present revision petition has been filed.

5. According to the the learned counsel appearing for the revision petitioner, the counsel engaged by them in the present revision petition had fallen ill and he had not attended the Court for so many days, later he had passed away. In such circumstances, the appellants cannot be found fault with for not representing the appeal in time. That apart, the appeal has been presented in time but there is only delay in representing the memorandum of appeal.

6. *Per-contra*, the learned counsel appearing for the respondent herein strongly resisted the prayer of the revision petitioner and contended that no proper reason has been assigned by the revision petitioner for the huge delay of 2206 days in representing the first appeal. When the delay has not been explained, the first Appellate Court cannot



CRP.(MD).No.9 of 2019

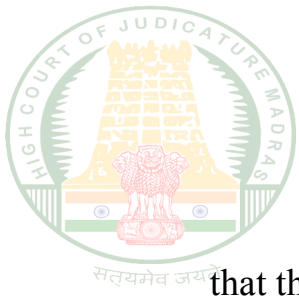
WEB COPY

be found fault with in dismissing the application. He further, contended that in view of the huge delay in representation, the rights accrued to the respondents in the appeal cannot be set at naught by allowing the condone delay application.

7. Heard both sides and perused all the materials available on record.

8. The revision petitioner herein has filed the suit for partition and the said suit was dismissed on merits and the appeal has been presented before the trial Court in time. When the appeal was returned for rectification of certain defects, it has been represented with a huge delay of 2206 days. The said delay has not been condoned by the Appellate Court.

9. On perusal of the record reveals that Mr.K.Sankarappa Reddiar, advocate had filed the appeal and it is not in dispute that he had passed away, before the appeal could be represented. The appellant should have been vigilant enough in following the case. The Appellate Court should see whether the appeal has been represented or not. However, considering the fact that the counsel who has filed the appeal has passed away before the Appellate Court. This Court is of the considered opinion



CRP.(MD).No.9 of 2019

WEB COPY

that the delay could be condoned on terms.

10. In view of the above said deliberations, the order impugned in the revision petition is set aside and I.A.No.91 of 2017 stands allowed on a condition that the revision petitioner shall pay a sum of Rs.5,000/- to the learned counsel appearing for the revision petitioner on or before **26.03.2025**. This civil revision petition stands allowed. No costs. Consequently, connected miscellaneous petition is also closed.

11. Post for reporting compliance on 27.03.2025.

05.03.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes
nst
To
The
Sub-Court, Thoothukudi.



WEB COPY



CRP.(MD).No.9 of 2019

R.VIJAYAKUMAR,J.

nst

CRP.PD.(MD).No.9 of 2019
and
CMP(MD).No.6839 of 2024

Dated: 05.03.2025