



C.R.P.[MD]No. 181 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.07.2025

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.R.P.[MD]No.181 of 2022

and

C.M.P.[MD]No.799 of 2022

Selvi

...Petitioner

Vs.

1.Kannan

2.Kalimuthan

...Respondents

PRAYER: Civil Revision Petition is filed under section 115 of Code of Civil Procedure, praying to call for the records to the Fair and Decreetal order passed in I.A.No. 175 of 2018 in O.S.No.65 of 2010 dated 16.09.2021 on the file of learned District Munsif cum Judicial Magistrate, Ilayankudi and set aside the same by allowing this Civil Revision Petition.

For Petitioner : Mr.M.S.Jeyakarthik

For Respondent No.1 : No Appearance

For Respondent No.2 : Mr.B.Prahalad Ravi



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ORDER

This petition has been filed seeking to set aside the order passed in I.A.No.175 of 2018 in O.S.No.65 of 2010 dated 16.09.2021, on the file of learned District Munsif cum Judicial Magistrate, Ilayankudi.

2.The case of the petitioner is that the petitioner is the plaintiff in the partition suit. She filed a partition suit against her brother and against the purchaser who is the second defendant in the suit. The said suit came to be dismissed for default on 20.03.2012, against which the petitioner filed a set aside application in I.A.No.175 of 2018, under Section 5 of the Limitation Act, with a delay of 1463 days. However, the delay petition was dismissed. Challenging the same, the present Civil Revision Petition has been filed.

3.Learned Counsel for the petitioner would submit that the delay of 5 years is neither willful nor wanton and the petitioner suffered with some health issues. Hence, she was unable to appear before the trial Court and due to non-appearance of the petitioner, the suit came to be dismissed as ex-parter. Moreover, the reasons for the delay in filing the set aside application has been perfectly justified in the affidavit filed in I.A.No.175 of 2018. However, the



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same was dismissed by the trial Court, which needs to be interfered with.

Accordingly, prays for appropriate orders.

4.Per contra, learned Counsel for the respondents would submit that the petitioner and the first respondent are none other than sister and brother and a suit came to be filed initially in the year 2010 as O.S.No.65 of 2010 and the examination of P.W.1 was concluded in the year 2011 itself and on 03.12.2011, P.W.2 was absent for cross-examination and hence, adjourned to 08.12.2011, again P.W.2 was absent thrice and for more than one year P.W.2 was absent and the petitioner has also not taken effective steps to complete her evidence, thereby her case was posted for default and dismissed for default. Whereas, the restoration petition is filed only in the year 2016, after a lapse of 1463 days, which delay has also not been properly explained by the petitioner. Accordingly, he prays for dismissal of this Civil Revision Petition.

5.Even a bare perusal of the condone delay application does not reveal the reason for condoning the delay. In the absence of any justifiable reason, delay petition cannot be entertained on merits. Admittedly, the petitioner herein is the sister of the first respondent. The first respondent sold half share of the property in favour of the second defendant in the year 2009. Thereafter, the



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petitioner filed a suit to deprive the rights of the second respondent from enjoying the property. The first respondent sold only 50% of his share. Filing vexatious suit, claiming 50% of the share is not sustainable. Further, there is a huge delay of 1463 days and the delay has also not been properly explained. Hence, this Court does not find any merit to interfere with the order of the trial Court.

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

07.07.2025

Internet: Yes/No

Index: Yes/No

MR



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To

- 1.The District Munsif cum
Judicial Magistrate,
Ilayankudi.
- 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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