WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Thursday, the Third day of July Two Thousand and Twenty Five

PRESENT

The HONOURABLE MR. JUSTICE K.K. RAMAKRISHNAN

CMP(MD). No.5362 of 2023
and
A.S.No.939 of 1994

1.Veluchamy Devar (Died)

2.Umaiyakunjaram

3 Muniyasasmy

4.Panchavarnam

5.Lakshmi

6.Perumal

7.Irulayee

8.Muneeswari

9.Parvathi

10.Thirumurugan
..Petitioners

-Vs-

1 Villayudha Devar (Died),

2 Malaipandi,

3 Nagu,

https://www.mhc.tn.gov.in/judis

WEB COPY

4 Valli,

5 Natarajan,

6 Karnan,

7 Madasamy,

8 Illayakkal,

9 Chithravel,

10 Nagavalli,

11 Namburajan,

12 Ilango,

13 Ilaiyaprakash,

14 Arumugam,

15 Karuppusamy,

16 Rajalakshmi,

17 Vijayaboomadevi,

18 Govindaraj,

19 Meenambikai, ...

Respondents

Prayer in CMP(MD)No.5362/2023;-

Civil Miscellanesous Petition is filed under 5 of the Limitation Act,to condone the delay of 5031 days in filing the petition to restore the Appeal Suit in A.S. NO. 939/1994 which

https://www.mhc.tn.gov.in/judis

WEB COPY

was dismissed for non prosecution on 12.02.2007..

Prayer in A.S.No.939 of 1994;-

Appeal Suit filed Under Section 41 Rule.1 and Section 96 of C.P.C.,against the Judgment and Decree dated 30/09/1992 made in O.S.No.13 of 1991 on the file of the Sub Judge,Ramanathapuram.

ORDER:- This Civil Miscellanoues Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Ms.M.D.Devi Saravana Priya, Advocate for the Petitioners and of Mr.T.Thirumurugan , Advocate for R2 to 4 and R8 to 19 and this Court made the following order:

This Civil Miscellaneous Petition has been filed to condone the delay of 5031 days in filing the petition to restore the appeal suit in A.S.No.939 of 1994 which was dismissed for non prosecution on 12.02.2007.

2.The original plaintiff is O.S.No.13 of 1991, namely, Veluchamy Thevar had filed the suit for partition on the file of the Sub-Court, Ramanathapuram. The suit was dismissed by the judgment dated 30.09.1992. He had filed the above appeal suit, challenging the said judgement and decree. The case was posted for final hearing on various occasions, and there was no

https://www.mhc.tn.gov.in/judis

WEB COPY

representation and hence, this case was listed under the caption for dismissal on 12.02.2007. There was no representation on that day and hence, the suit was dismissed for non-prosecution on 12.02.2007. The legal heirs of the said Veluchamy Thevar has filed this application stating that they came to know about the dismissal of the appeal for non-prosecution in the month of May 2022, when the legal heirs of the respondents claimed that the appeal suit was dismissed. Therefore, there was bonafide delay of 5031 days for setting aside the order of this Court dated 12.02.2007.

3.The learned counsel for the respondent would contend that they have filed the suit in O.S.No.10 of 2021 for declaration of the suti scheduled properties with the dismissal order copy of this Court dated 12.02.2007. Therefore, the reason was not bonafide.

4.The contention of the respondent has merit. In the plaint filed in O.S.No.10 of 2021, they clearly stated about the dismissal of this Appeal Suit dated 12.02.2007, and also they have entered into number of revenue proceedings with knowledge of the dismissal of the appeal suit. Their specific stand is that, they are in possession of the properties and hence, they sought relief in

https://www.mhc.tn.gov.in/judis

WEB COPY

O.S.No.10 of 2021 to declare the title on the basis of the adverse possession. Therefore, this Court finds no bonafides in the plea of the petitioners that they got knowledge only in the month of May 2022. From the averment of the plaint in O.S.No.10 of 2021 it appears that they had sufficient knowledge of the dismissal of the Non-prosecution much earlier to May 2022. Hence, this Court finds no acceptable ground to condone the delay 5031 days. This Court is not satisfied with the reasons stated in the affidavit to condone the delay of 5031 days (approximately 13.5 years). Now, they have also filed the subsequent suit for declaration on the plea of the adverse possession. Hence, this Court is inclined to dismiss this application.

5.Accordingly, this Civil Miscellaneous Petition stands dismissed.

Sd/-
Assistant Registrar (CS-I)

// True
Copy //

/ /2025
Sub Assistant Registrar
(CS-I / II / III / IV)

TO

https://www.mhc.tn.gov.in/judis

WEB COPY

The Sub Judge,
Ramanathapuram.

ORDER DATED : 03/07/2025

==========

ORDER

==========

CMP(MD). No.5362 of 2023
and
A.S.No.939 of 1994

Giving direction and etc.
as stated within.

RA - (22.07.2025) 6P/ 2C
Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.

https://www.mhc.tn.gov.in/judis