



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
CIVIL APPELLATE JURISDICTION**

Wednesday, the Twenty Third day of April Two Thousand and Twenty Five

PRESENT

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

C.M.P.(MD)No.485 of 2025

in

A.S.(MD)No.SR82863 of 2024

1. Shanmugavel
2. Kaniammal
3. M.Velammal
4. Murugammal

... Petitioners / Appellants

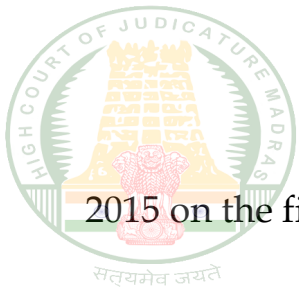
Vs.

V.A.Seyad Muhammed(Died)

1. Asiya Banu
2. Syed Ismayil Muhaitheen
3. Syed Alima Parveen
4. Syed Appas
5. Yasmin Banu
Madasamy(Died)
6. Seethaiammal
7. Balasubramanian
8. M.Esakkimuthu
9. Hameetha Beevi

... Respondents / Respondents

Prayer in C.M.P.(MD)No.485 of 2025 : Civil Miscellaneous petition filed under Section 5 of the Limitation Act, to condone the delay of 566 days to file the first appeal as against the judgment and decree dated 20.01.2023 passed in O.S.No.127 of



2015 on the file of the Principal District Judge, Tirunelveli.

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Prayer in A.S.(MD)No.SR82863 of 2024 : Appeal suit filed under Section 96 CPC., to set aside the judgment and decree dated 20.01.2023 passed in O.S.No.127 of 2015 on the file of the Principal District Judge, Tirunelveli and allow the first appeal.

ORDER: This 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 Mr.A.Sankararamasubramaian, Advocate for the petitioners and of Mr.S.Pon Senthil Kumaran, Advocate for the 1 to 5 respondents and Mr.H.Arumugam, Advocate for the 9th respondent, this Court made the following order:

This appeal is directed against the judgment and decree dated 20.01.2023 made in O.S.No.127 of 2015 on the file of the Principal District Judge, Tirunelveli. The appellants are defendants 1, 4, 7 and 8. They had given power of attorney in favour of the sixth defendant Esakkimuthu. The said Esakkimuthu had entered into a sale agreement with the original plaintiff. The Court below decreed the suit for specific performance. Thereafter, E.P. was filed. EP stands posted for execution of sale deed.



The next hearing date is on 06.06.2025. It is at this stage, this appeal has been filed.

The original plaintiff had passed away. His legal heirs had prosecuted the suit.

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2. The first appeal was filed with a delay of 566 days. To condone the same, this CMP has been filed. The plaintiffs have filed a detailed counter affidavit opposing the delay.

3. The learned counsel for the plaintiffs points out that the appellants had full knowledge of the suit proceedings and they had taken part in the execution proceedings. Therefore, the appellants cannot be shown any indulgence. According to him, no sufficient cause has been made out for condonation of delay.

4. No doubt, the stand of the plaintiffs has considerable merit. But we cannot lose sight of the fact that this is a first appeal and that valuable property rights are involved. A decree for specific performance has been granted. In paragraph No.4 of the affidavit filed in support of the CMP, the appellants have pleaded that since they did not have requisite funds, they could not file the appeal in time and since they have to arrange funds, the delay was occasioned. These reasons appear to be *bona fide*. Considering the fact that the substantial civil rights are involved, we are



inclined to condone the delay. This civil miscellaneous petition is allowed.

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Sd/-

Assistant Registrar C S II

// True Copy //

/06/2025

Sub Assistant Registrar
(I / II / III / IV)

PMU

To

+1cc to Mr.S.Ponsenthi Kumaran, Advocate(SR.No.4676.)



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Order Dated :23/04/2025

For CD Purpose

C.M.P.(MD)No.485 of 2025 in

A.S.(MD)No.SR82863 of 2024

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jj/09.06.2025 5P/2C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023