



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-03-2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

CMP Nos. 628 & 629 of 2012

in

A.S.No.825 of 1998 and A.S.No.906 of 1988

1. Adhilakshmi @ Vasantha
2. V.Prasanna
3. V. Seetharaman

..Petitioners in both
CMP(s)

Vs

1. Sankari
2. Minor Sinduja
Minor Rep By Mother & Guardian Sankari.
All Were Residing At Reddiar Street,
Melakonathai, Vikravandi (via) Villupuram
District.

..Respondents in both
CMP(s)

Prayer in C.M.P.No.628 of 2012: Civil Miscellaneous Petition filed to condone the delay of 277 days in filing the restoration petition to set aside the order dated 10.08.2011 in A.S.No. 825 of 1988.

Prayer in C.M.P.No.629 of 2012: Civil Miscellaneous Petition filed to condone the delay of 277 days in filing the restoration petition to set aside the order dated 10.08.2011 in A.S.No. 906 of 1988.



For Petitioner(s): Mr.R.Thiagarajan
(in both CMPs)

For Respondent(s): Mr.A.Sasidharan
(in both CMPs)

COMMON ORDER

These Civil Miscellaneous Petitions have been filed to condone the delay of 277 days in filing the restoration petition to set aside the order dated 10.08.2011 in A.S.No.825 of 1988 and A.S.No.906 of 1988 respectively.

2. Heard Mr.R.Thiagarajan, learned counsel for the petitioners and Mr.A.Sasidharan, learned counsel for the respondents.

3. The present Civil Miscellaneous Petitions were filed to restore the appeal suits, which were dismissed for non-prosecution.

4. The instant appeal suits have been filed against the judgment and decree made in O.S.No.77 of 1986, by the plaintiff and the first defendant respectively.

5. The plaintiff and the first defendant were wife and husband respectively. The plaintiff/wife had filed a suit seeking partition and separate possession of half share of the plaintiff in the suit schedule properties. A reading



of the plaint would indicate that the properties scheduled to the suit belonged to the first defendant and the only son of the plaintiff and the first defendant.

Further averments in the plaint would also disclose that their only son had predeceased his parents, and the plaintiff, being the mother, was entitled to a share in the suit schedule properties, and that the first defendant had unilaterally executed a Settlement Deed in favour of the defendants 2 and 3, and hence, such Settlement Deed is invalid and void, and therefore, the prayer for partition had been sought for. The third defendant alone had contested the suit, and thereafter, under the impugned judgment and decree, the suit came to be dismissed. Being aggrieved against the order of dismissal, the plaintiff had instituted A.S.No.906 of 1988, and the first defendant had instituted A.S.No.825 of 1988.

6. The grievance of the first defendant is that the Settlement Deed that he had executed had not come into force, and that the said settlement was a contingent gift on condition of payment of Rs.500/- per annum to both the plaintiff and the first defendant. It is the further claim of the first defendant that the third defendant is in enjoyment of the property, which had been settled in favour of the second defendant. Pending the appeal suits, both the plaintiff and the first defendant had died, and the second defendant, who was the respondent, had been transposed as the appellant.

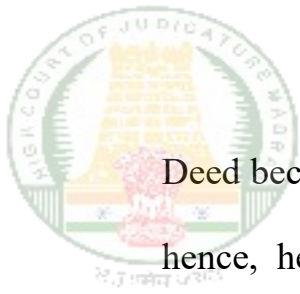


7. From the facts narrated above, it is crystal clear that the property belonged to the first defendant and his son, in which the plaintiff gets a share upon the death of the son. The plaintiff, being the mother, gets a share upon the death of the son, and the property had been settled in favour of the defendants 2 and 3.

8. A reading of the plaint also does not disclose there are any other Class 1 legal heirs to both the plaintiff and the first defendant. The first defendant had not instituted any suit to declare the Settlement Deeds as not binding for the failure of fulfilling the contingencies upon which the settlement was made.

9. In respect of the suit properties, there are no other legal heirs of both the plaintiff and the first defendant to make a claim. It is only the second and the third defendant, who step into their shoes as Legal Representatives on the strength of the Settlement Deed executed by the first defendant in their favour. The Settlement Deed, at any rate, would be held to be void only in respect of the plaintiff alone, as admittedly the first defendant was a joint owner along with their son, entitling him to have 50% share in the property.

10. As noted above, he had not filed an independent suit or even made a counter claim in the suit filed against the wife with regard to the failure of the defendants 2 and 3 in fulfilling the contingencies upon which the Settlement



Deed becomes inoperative. The plaintiff had also died during the pendency, and hence, her claim also gets extinguished, and the Settlement Deed becomes operative in respect of the defendants 2 and 3. The *inter se* dispute between the defendants 2 and 3 with regard to the property cannot be decided in the present appeal suit, and the parties can very well work out their rights in an appropriate suit filed in that regard.

11. For the aforesaid reasons, this Court is of the view that there is no useful purpose in restoring the appeal suits to be heard on merits, and accordingly, both the Civil Miscellaneous Petitions stand dismissed. No costs.

24-03-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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K.KUMARESH BABU J.

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