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CMP No. 3239 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-06-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

CMP No. 3239 of 2026

in

CROS.OBJ No. 26 of 2009

1.Indrani Dorairaj
W/o. S.R.Dorairaj,

2.Nandhini
D/o. S.R.Dorairaj,

3.Abarajitha
D/o. S.R.Dorairaj,

..Appellant(s)

Vs

1.Akilandeswari
D/o. S.R.Dorairaj,

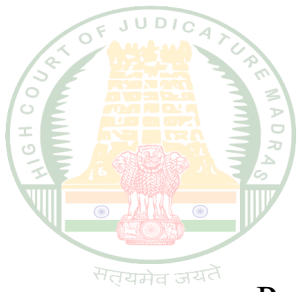
2.S.Lakshmanan
S/o. Subbaiya Gounder

3.Abirami Somasundaram
W/o. S.R Somasundaram,

4.S. Vedambal
W/o. S.R Subbaiya Gounder

5.R.Prabhavathi
W/o. K Ramanathan

..Respondent(s)



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Petition filed under Section 5 of Limitation Act to condone the delay of 733 days in filing the restoration petition in Cross Objection NO.26 of 2009 in AS.No.1129 of 2007 dated 01.02.2023 on the file of this Honble Court

For Appellant(s): Ms.S.G.Thilagavathi
Senior Advocate
for Mr.V.Anandhamoorthy

For Respondent(s): Mr.S.P.Vishnu Prasath For R1

Mr.N.C.Ashok Kumar
for Mr.M.Narayanaswamy For R2

Mr.Srinath Sridevan Senior Advocate
for Ms.Aishwarya S Nathan For R3

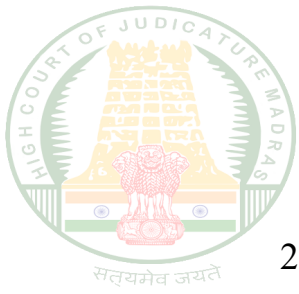
Mr.Srinath Sridevan Senior Advocate For
Ms.S.Vindhya Vasini For R5

R4-Died

ORDER

(Order of the Court was made by C.V.KARTHIKEYAN J.)

This petition has been filed by Cross-Objectors 1, 2 and 4, who are Respondents 4, 5 and 7 in A.S.No.1129 of 2007 seeking to condone the delay of 733 days in filing the petition to restore Cross Objection No.26 of 2009 in A.S.No.1129 of 2007.



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2. The said cross objection had been dismissed as withdrawn on an endorsement made by the learned counsel for the petitioners herein on 01.02.2023. Recording the memo and noting the endorsement made by the learned counsel, a Division Bench of this Court had dismissed Cross-Objection No.26 of 2009 by order dated 01.02.2023. Subsequently, the first appeal in A.S.No.1129 of 2007 was also adjudicated on the basis of a joint Compromise Memo filed by the parties and the joint Compromise Memo was taken note of and on the said basis, the said Appeal Suit was also disposed of. That was by an order dated 14.02.2023.

3. This application has now been filed seeking to condone the delay of 733 days in filing the petition to restore Cross-Objection No.26 of 2009. It is to be noted that one of the Cross-Objectors viz., Akilandeswari, who was also one of the respondents / 6th respondent in A.S.No.1129 of 2007 has not joined in filing the petition herein. It had been contended that the daughter of Akilandeswari had forwarded an electronic mail to the counsel for the cross-objectors in Cross Objection No.26 of 2009 granting permission to withdraw the cross-objection and on the basis of said electronic mail, the learned counsel also withdrew the said cross-objection. It is now contended that the said daughter of Akilandeswari was not a party to the suit and therefore, in *stricto sensu* a third party stranger and had no authority to issue such instructions to the



counsel and on the basis of such instructions, the counsel should not have come forward to withdraw the cross-objection. It had also been contended that since the cross-objection had been withdrawn, in the Appeal Suit wherein the joint Compromise Memo had been recorded, the shares of the present petitioners herein had been ignored and they have not been recognized as being entitled to any share and the other parties to the Appeal Suit, both appellants and respondents, alone had signed the joint Compromise Memo. It has been contended that these proceedings had taken place without the knowledge of the present petitioners and the facts came to their knowledge only in November 2024 and thereafter, they had taken steps to file the present Civil Miscellaneous Petition and in the meanwhile, there had been a delay of 733 days and seeking to condone the delay, the present petition had been filed.

4. Heard Ms.S.G.Thilagavathi, learned Senior counsel for the petitioners.

5. The learned Senior counsel drew the attention of this Court to the relevant facts of the case and pointed out that the cross-objection in Cross Objection No.26 of 2009 had been withdrawn by the learned counsel on the basis of an electronic mail addressed by the daughter of one of the cross-objectors / Akilandeswari. It was very seriously contended that the said daughter, not being a party to the litigation, had no authority to so instruct the counsel to withdraw the cross-objection and if at all such instructions had been



given, it could only be restricted, if she represents her mother, to the share of her mother and effecting the rights of her mother alone and not of the petitioners

herein. It had been contended that this withdrawal had very seriously prejudiced the rights of the petitioners since overlooking their valuable rights, the other parties to the Appeal Suit had entered into a joint Compromise Memo which was also recognized by the Court and on that basis, a decree had been passed in the Appeal Suit. Thus, it had been contended that owing to this particular singular act of the daughter of the 3rd Cross Objector, the rights of the present parties had been very seriously affected. It was contended that they had come to know about this particular fact only in November 2024 and not earlier and that therefore since their rights had been affected, the delay should be condoned. Further, the date of knowledge should be taken into consideration and the delay should be counted from that particular date.

6. Serious objections to this averment have been raised on behalf of the respondents.

7. Heard Mr.S.P.Vishnu Prasanth, learned counsel for first respondent, Mr.N.C.Ashok Kumar, learned counsel representing the counsel on record for second respondent and Mr.Srinath Sridevan, learned Senior counsel appearing for Ms.Aishwarya S.Nathan and Ms.S.Vindhya Vasini, counsels for third and fifth respondents.



8. Even before delving into the objections, it would only be appropriate to give a brief narration of facts of the suit from which the Appeal Suit had arisen.

A suit had been filed by one of the daughters in the family seeking partition and separate possession of the properties of the father claiming that the father had died intestate. The schedule to the plaint contained A to G schedule properties. It must also be immediately pointed out that the present petitioners are concerned with only A and B schedule properties. Quite apart from that suit for partition, one of the brothers had filed a Succession Original Petition claiming that their father had left behind a Will. He had also filed another suit seeking recovery of money on the basis of a promissory note. The Suit for partition, the Suit seeking recovery of money and the Succession Original Petition were all taken up together and the trial Court had held that the Will had not been proved in a manner known to law and therefore, negated the contentions that inheritance would flow under the said Will and had therefore held that the inheritance would flow as an intestate devolution of property of a Hindu male dying intestate. The suit for recovery of money was also dismissed.

9. Questioning this particular common judgment, an appeal had been filed challenging dismissal of suit for recovery of money and a Civil Miscellaneous Appeal had also been filed against the dismissal of the Succession Original Petition and another appeal suit had also been filed questioning the non-grant of partition or rather according to the appellants, grant of inequitable partition with



respect of A and B schedule properties. The aggrieved parties also filed Cross Objections.

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10. We are today concerned with Cross Objection No.26 of 2009 in A.S.No.1129 of 2007. The issue of the *bona fide* of the petitioners herein had been very seriously urged by Mr.Srinath Sridevan, the learned Senior Counsel appearing on behalf of the respondents who contended that subsequent to the decree in the Appeal Suit, there were further proceedings before the Revenue authorities relating to mutation of patta in accordance with joint Compromise Memo. Applications were filed seeking mutation of patta and the revenue authorities had very specifically issued notice to the present petitioners about the fact that a decree had been passed in the Appeal Suit and that pursuant to such decree, applications had been filed to mutate the patta. The petitioners herein had also appeared before the revenue authorities and had contended that the joint Compromise Memo presented before the Court, on the basis of which the decree was passed in the Appeal Suit was not binding on them. These points have been pointed by Mr.Srinath Sridevan, the learned Senior counsel to contend that the petitioners herein had knowledge much earlier to November 2024 about the presentation of the joint Compromise Memo and the fact that a decree had been passed on the basis of such Compromise Memo. It is, therefore, contended that the specific statement in the affidavit that petitioners gained knowledge only in November 2024 is false to the knowledge of the



petitioners. It is therefore contended that when the Court is approached by presenting false facts, more particularly suppressing material facts, the Court should not give any leverage to the petitioners.

11. A further narration of the facts will have to be stated. As pointed out, the main contention over which the petitioners are now aggrieved is with respect to denial of division of A and B schedule properties. It must be stated that originally one Ramalingam, who had two sons viz., Durairaj and Subbaiyan, held the properties in A to G schedule properties. There was a partition among Ramalingam, Durairaj and Subbaiyan. Under the said partition deed, one Meenakshi Ammal, the wife of Ramalingam was granted life estate over A and B schedule properties with a further clause that after her death, A and B schedule properties would devolve in equal shares to Durairaj and Subbaiyan. The petitioners herein come under the branch of Durairaj. The respondents, who object grant of any relief to the petitioners, come under the branch of Subbaiyan. The properties over which the contentions are raised are A and B schedule properties. Admittedly, after the death of Meenakshiammal, both Durairaj and Subbaiyan became entitled to an equal undivided $\frac{1}{2}$ share in the said A and B schedule properties.

12. It is the specific case of the respondents that the trial Court had not granted any share in the A schedule properties to the cross objectors /



petitioners herein only because a finding had been returned that Durairaj, even during his life time on the basis of documents executed and rights acquired, had disposed of his ½ share in the 'A' schedule properties. It had been further contended on behalf of the respondents that with respect to the B schedule property to which the present petitioners were entitled to a share as legal heirs of Durairaj, their share was left aside in the compromise memo and that share, which had been left aside and to which the petitioners had a right, had been subsequently conveyed by them. It is therefore contended that the petitioners herein cannot claim any share in the A schedule properties, which had been disposed of by Durairaj in his life time and in the B schedule properties which had been dealt with by them during their life time.

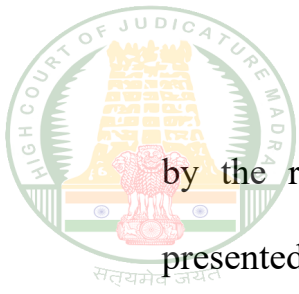
13.Ms.S.G.Thilagavathi, learned Senior counsel for the petitioners, however contended that in the patta proceedings, though one ½ share in the B schedule properties were ostensibly said to have been set aside for the petitioners towards their share, the respondents had claimed right in entirety over the properties in the B schedule.

14. This fact is also pointed by Mr.Srinath Sridevan, learned Senior counsel for the respondents to drive home the point that the petitioners are therefore aware of the joint Compromise Memo, the passing of the decree subsequent to the Compromise Memo and naturally with respect to the



withdrawal of the cross objection on 01.02.2023 and therefore, the contention that they were aware of the presentation of the compromise memo only in November 2024 is false to the knowledge of the petitioners.

15. It is also seen from the records now presented before this Court that the petitioners had participated in the revenue proceedings and had very specifically mentioned to the Cross Objections by stating their numbers and to the Appeal Suits by stating their numbers and had stated that the cross objection had been withdrawn on the basis of a Compromise Memo. They had very specifically stated that they had withdrawn the Cross Objection. Having stated that particular fact before the revenue authorities, much before November 2024, it does not augur well to state in the affidavit before this Court that they had knowledge only in November 2024. No court can grant relief to a person who comes to Court with the statement of a false fact. They could have very well stated that they knew about the withdrawal of the cross objection much prior, which would only indicate that the number of days of delay would alone have increased and seek indulgence of this court to condone the delay. Having come to Court with a specific averment that they became aware of the fact only in November 2024 and the records show that they had participated in the revenue proceedings on and from 23.04.2023 onwards and notices had been served on them which establish that they were aware of the fact that the Cross Objection had been withdrawn and had also had filed an appeal against the order passed



by the revenue authority of the first instance, we hold that the affidavit presented before us contains a false fact. We are not able to appreciate this statement of a false fact.

16. In the affidavit, it had been further averred that the knowledge about the withdrawal of the Cross Objection and about the appeal filed by the first respondent before the Revenue Divisional Officer, Erode and the subsequent representations and the Judgment and Decree made in the Appeal Suit and in the Cross Objections only through an application made under the RTI Act. This fact stated on affidavit is also false since the petitioners had participated before the Revenue authorities even in April 2023 and had filed an appeal in the month of June, 2024, again stating about the withdrawal of the Cross Objection and again stating about the presentation of a joint Compromise Memo and stating about the passing of the Compromise Decree by this Court. This Court can never appreciate an affidavit filed with false facts. We are not convinced with the reasons stated to condone the delay.

Accordingly, this petition is dismissed. No costs.

(C.V.K.,J.) (K.R.S.,J.)
09-06-2026

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

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**C.V.KARTHIKEYAN J.
AND
K.RAJASEKAR J.**

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