



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 05.01.2026

Order pronounced on : 09.01.2026

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.2661 of 2023
& CMP.No.16442 of 2023

Palaniammal (Died)

1.1.M.Balasubramaniam
2.Sulochana

... Petitioners

Vs.

S.Muniyappan (Died)

1.Palanisamy
2.Jayalakshmi
3.Selvi

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of Constitution of India, to set aside the fair and final order in I.A.No.263 of 2016 in O.S.No.110 of 2009 on the file of the Sub-Court, Tiruchengode dated 23.01.2021.

For Petitioners : Mr.A.Sivaji



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For Respondents : Mr.K.R.Samratt

ORDER

The revision petitioners are the legal heirs of the first defendant. They filed I.A.No.263 of 2016 in O.S.No.110 of 2009 for condoning a delay of 1433 days in filing the application to implead them as legal representatives of the deceased first defendant, who died on 10.04.2012. The said application was opposed by the respondents and ultimately the trial Court dismissed the application, as against which, the present revision petition has been filed.

2.I have heard Mr.A.Siivaji, learned counsel for the revision petitioners and Mr.K.R.Samratt, learned counsel appearing for respondents.

3.Mr.A.Sivaji, learned counsel appearing for the petitioners would submit that the trial Court, without any application of mind, has proceeded to non-suit the petitioners. For instance, he would point out that even in the impugned order, the trial Court has recorded that the application has been filed under Section 5 of the CPC, instead of Section 5 of the Limitation Act.

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That apart, he would invite my attention to the fact that the legal representatives were already brought on record and sale deed was executed by the Court in the names of the legal representatives of the deceased first defendant alone. It is therefore his contention that when the LR's were already recognized in the said proceedings, the trial Court ought not to have dismissed the application for condonation of delay. According to the learned counsel for the revision petitioners, the trial Court should have permitted the petitioners to bring themselves on record and prosecute the matter on merits. He would therefore pray for the revision being allowed.

4.Per contra, Mr.K.R.Samratt, learned counsel appearing for the contesting respondents state that the suit was filed for specific performance of a registered agreement of sale, with the mother of the revision petitioners and their maternal aunt. In the said suit, both the defendants were initially set ex-parte and the plaintiff was directed to deposit the balance sale consideration, which has also been complied with. In fact, in the interregnum period, the sister of the first defendant, namely the second defendant sought to set aside the ex-parte decree in the suit and was successful in such attempt. Thereafter, the suit was contested by the second



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defendant and on merits, the suit was decreed. The mother of the revision petitioners filed an application for setting aside the ex parte decree, which was however not prosecuted.

5. According to the counsel for the respondents, subsequently the EP was also numbered and the sale deed came to be executed in favor of the respondents. The learned counsel for the respondents would state that nothing survives for consideration in the revision petition. He would therefore pray for dismissal of the revision petition.

6. I have carefully considered the submissions by the learned counsel on either side.

7. The petitioners state that they are the legal representatives of the deceased first defendant in the suit for specific performance. It is in dispute that the first defendant died, pending the suit for specific performance. It is the case of the petitioners that they were never aware of the suit for specific performance and only after receiving notice in the execution petition, they were advised to take out applications to set aside the decree. In fact, an



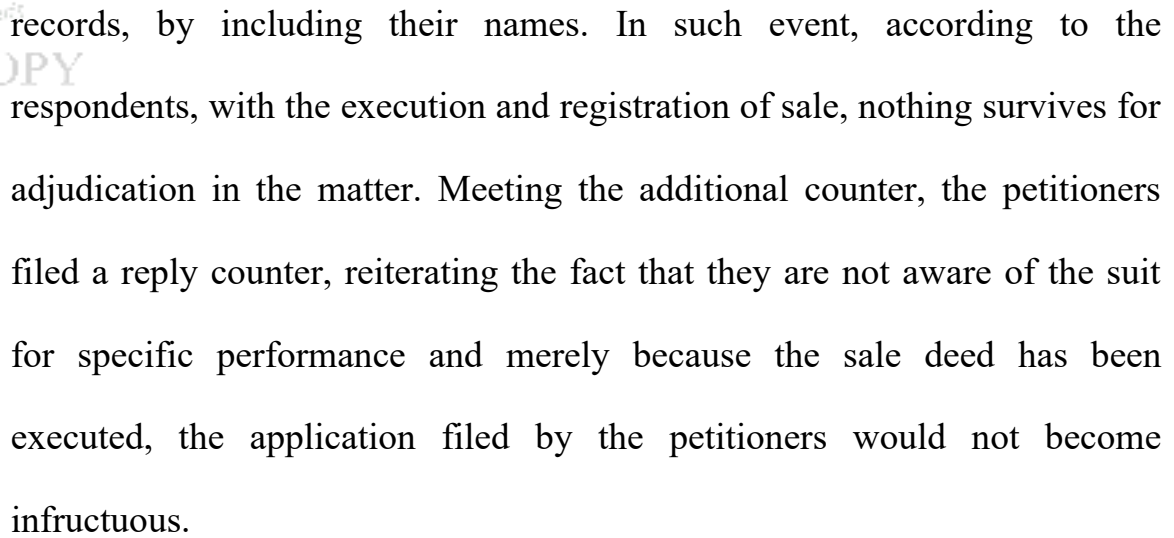
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application to set aside the ex-parte decree was also filed on 23.06.2015.

The said application was returned by the Court, on the ground that the petitioners have to take out necessary applications to implead themselves.

8.It is at that juncture that the application under Section 5 of the Limitation Act was taken out, seeking condonation of the delay of 1433 days in filing the application under Order XXII of CPC. The respondents vehemently opposed the said application, on the ground that the petitioners have sworn to a false affidavit, as if they had no knowledge of the suit for specific performance. Even otherwise, according to the respondents, when R.E.A.No.7 of 2013 was filed, the petitioners can be clearly imputed with knowledge about the judgment and decree. However for more than three years, no steps were taken.

9.Further, according to the respondents, the petitioners are all residing in the same roof along with the first defendant, when she was alive. The respondents also filed an additional counter bringing it to the notice of the Court that in R.E.P.No.6 of 2015, sale deed has already been executed and subsequently, the respondents have also effected mutation of the revenue



10. The learned counsel for the petitioners would state that though the deceased first defendant, mother of the revision petitioners had herself filed an application to set aside the ex-parte decree in time, on 22.01.2011 the said application was returned and subsequently not traceable in the office of the lawyer of the first defendant. He would also state that the counsel for the mother also passed away subsequently and therefore, the petitioners were incapacitated to revive the application filed by the mother. It is therefore his contention that though the delay is 1433 days, in view of the peculiar facts and circumstances, the Court should have adopted a liberal approach and permitted the petitioners to bring themselves on record, especially, when, in the execution proceedings, they have already been impleaded. I am unable



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to countenance the said arguments of Mr.A.Sivaji, learned counsel for the petitioners.

11.The fact that the petitioners were impleaded in the execution proceedings will not tantamount to their stepping into the shoes of the deceased first defendant in the suit. If at all the petitioners desired to have the ex-parte decree set aside, it was open to them to either represent the application filed by the deceased first defendant, their mother or alternatively file a fresh application to get themselves impleaded in the suit and thereafter, seek for setting aside the ex-parte decree passed against the deceased first defendant.

12.Admittedly, the petitioners have not taken recourse to reviving of the application filed by their mother. They have opted to take out a fresh application to bring themselves on record as LRs of the deceased first defendant, by invoking provisions of Order XXII of CPC. In the said affidavit filed in support of said application, it is specifically contended by the petitioners that they were in dark about the suit for specific performance



by the petitioners that they were never aware of the pendency of the suit for specific performance.

14.Further, in any event, the decree was put to in execution and the sale deed has also been registered in favor of the respondents and at least in 2011, even according to the mother of the petitioners, the first petitioner if not the second petitioner came to be aware of the ex-parte decree passed in the suit. Even otherwise, the mere fact that the petitioners were putting in the execution petition and the sale deed incorporated their names, would not automatically invest themselves with a right to seek impleadment in the suit, which has already been disposed of, especially, when the petitioners attempted to have the decree set aside.

15.The trial Court has rightly noticed the fact that the petitioners have not even established as to when they came to know about the ex-parte decree, necessitating the application for impleading themselves as LR's of the deceased first defendant to be filed. The trial Court has also found that the addresses of the petitioners is the same as that of their mother. It is too much to digest that the petitioners were unaware of the suit filed against



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their mother, the first defendant and the decree passed subsequently, including the attempts made by the mother herself to have the decree set aside.

16.As already discussed, the mother has clearly imputed knowledge about the pendency of the suit, as well as the ex-parte decree on her son, the first revision petitioner herein. While so, without adverting to the case set up by the mother, the petitioners have claimed that they were not aware of the pendency of the suit itself. The said version is clearly unacceptable and unsustainable. From the affidavit filed by the mother, it is clear that the petitioners had knowledge of the judgment and decree even in year 2011 and there is absolutely no explanation, much less, sufficient cause shown by the petitioners for the delay of 1433 days. A mere slip in the opening paragraph of the order, referring to the application as one filed under Section 5 of CPC is nothing but an inadvertent typographical error and much cannot be made out of the same.

17.The trial Court has taken all factors into consideration and rightly found that the delay has not been satisfactorily and convincingly explained.



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In view of the foregoing discussion, I do not see any grounds made out for interfering with the well considered order of the trial Court.

18.In fine, the Civil Revision Petition is dismissed. No costs.

Connected Civil Miscellaneous Petition is closed.

09.01.2026

Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
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P.B. BALAJI,J.

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To
The Sub-Court, Tiruchengode.

Pre-delivery order made in
CRP.No.2661 of 2023
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