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C.M.P.No.13169 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2026

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.P.No.13169 of 2026

in

A.S.No.486 of 2005

C.Viswanathan

... Petitioner/Appellant

vs.

1.Karthika

2.Lakshmi

3.C.Samath

... Respondents / Respondents

PRAYER: Civil Miscellaneous Petition is filed under 151 of CPC, to set aside the Order of dismissal for non-prosecution dated 11.04.2017 and restore the First Appeal in A.S.No.486 of 2005 on file.

For Petitioner : Mr.A.Tamilvanan

for Mr.R.Sethuvarayar

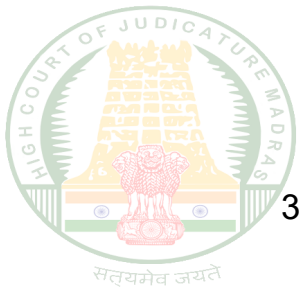
For Respondents : Mr.P.Mani

ORDER

Heard the learned counsel for the petitioner and the respondents.

2. This Civil Miscellaneous Petition is filed in order to restore the Appeal Suit which was dismissed for non-prosecution on 11.04.2017.

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3. Defendants No.1 and 2 are the Appellants.

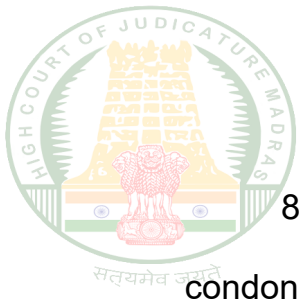
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4. Original Suit for partition was filed by one Chandra Udayar against his sons one Sampath and Viswanathan. During the pendency of the suit, the plaintiff Chandra Udayar died and his daughter Karthika and wife Lakshmi have been brought on record as legal representatives of the deceased Chandra Udayar.

5. The trial Court granted preliminary decree for partition of 1/3rd share excluding the properties of the plaintiff was passed. Aggrieved, the second son of Chandra Udayar, C.Viswanathan has preferred Appeal Suit in the year 2005.

6. On perusal of notes proceedings, it appears that on 11.04.2017, when the matter was posted for arguments, none represented the appellant, Appeal Suit stood dismissed for non-prosecution.

7. The petitioner has averred that he does not have any knowledge about the Order of dismissal and immediately this petition was filed.



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8. It appears that the petitioner filed C.M.P.No.10514 of 2026 to

condone the delay of 2540 days in filing the restoration petition and the said delay was condoned by Order dated 21.04.2026.

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9. Parties to this proceedings are to be vigilant and it is their responsibility to get to know about the hearing dates. Based on the aforestated reason alone this petition is filed. Originally, father of the appellant Chandra Udayar filed Original Suit in O.S.No.72 of 1997 before the Sub-Court, Dharmapuri. Thereafter, it was transferred to District Court, Dharmapuri and numbered as O.S.No.105 of 2004. The judgment was pronounced on 01.12.2004. Appeal Suit is filed before this Court in the year 2005 in A.S.No.486 of 2005. When the matter came on 11.04.2017, after 12 years from the date of filing of the First Appeal, as none represented the appellant, the Appeal Suit was dismissed for non-prosecution. To restore the First Appeal dismissed in the year 2017, Civil Miscellaneous Petition was taken out only in the year 2026 in C.M.P.No.10514 of 2026 under Section 5 of Limitation Act to condone the delay of 2540 days in filing the restoration petition against the Order of dismissal dated 11.04.2017 passed in A.S.No.486 of 2005. Roughly after 6 ½ years, the aforestated petition was filed and ordered to be allowed on 21.04.2026. Thereafter, the present petition for restoration of First Appeal



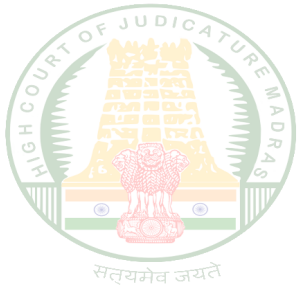
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has been taken on file. The sequence of events as mentioned supra clearly explicates that the appellant is not at all interested in pursuing the Appeal Suit. In such circumstances, Order of dismissal was not brought to his knowledge and he came to know about the same only in the month of April 2024 cannot be taken as an acceptable reason. Of course, this Court is conscious about the fact that technicalities should not come in the way of dispensation of justice.

10. Based on the aforestated narration in order to advance the cause of justice, this Civil Miscellaneous Petition stands dismissed.

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Index : Yes/No
Speaking / Non-speaking order
NCC: Yes / No
ssn



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R.KALAIMATHI, J.,

ssn

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in

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