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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-01-2026

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THE HONOURABLE MR.JUSTICE P.B. BALAJI**CRP No. 1804 of 2025**

Samaria

Petitioner(s)

Vs

Lilly Mary

Respondent(s)

PRAYER

Civil Revision Petition has been filed under Section 115 of the Civil Procedure Code, 1908, to set aside the Fair and Decretal Order dated 19.10.2024 in IA No. 1 of 2023 in IA No.407 of 2018 in OS No.212 of 2011 passed by the Learned Subordinate Judge, Poonamallee, and allow the revision.

For Petitioner(s): Mr.K.T.S.Sivakumar

For Respondent(s): No Appearance

ORDER

Heard learned counsel for the petitioner.

2. Despite service of notice, the respondent has not chosen to appear before this Court, either through counsel or in person.



3. The learned counsel for the petitioner took me through the typed set of papers and invited my attention to the suit for partition filed by the respondent, who is the sister of the revision petitioner. The petitioner was set exparte at the stage of preliminary decree. Subsequently, an application to condone delay of 81 days in setting aside the preliminary decree was filed. However, the said application was dismissed for non-prosecution.

4. Thereafter, the petitioner preferred an application to restore the said application under Order 9 Rule IX of the Code of Civil Procedure, 1908. However, as there was a delay of 1293 days in filing the restoration application, a condone delay application was taken out. The said application has been dismissed by the Trial Court and aggrieved by the same, the present civil revision petition has been filed.

5. The learned counsel for the petitioner states that the delay had occasioned only on account of the intervening COVID-19 pandemic and that the actual delay was only 81 days. He further brings to my notice that the parties are brother and sister and that, as on date, no final decree proceedings have been initiated. The petitioner has already filed the written statement along with the application to set aside the exparte preliminary decree.



6. It is further stated by the petitioner that the petitioner lost her husband and that her only son is pursuing higher education in college, due to which she could not follow the matter. She also stated that though the Interlocutory Application was dismissed on 15.03.2019, the status of the same was not uploaded on the online site, and therefore, the petitioner was kept in dark. The intervening COVID-19 pandemic was also a reason which further prevented the petitioner from initiating proceedings before the Court to restore the application.

7. The present petitioner is the wife of the brother of the respondent. In view of the above discussion, I am satisfied that the petitioner has made out sufficient cause for being given an opportunity to contest the suit on merits.

8. The trial Court, however, proceeded to dismiss the application, being carried away by the length of delay of 1293 days. The Court ought to have taken into consideration of the principles of equity and also the fact that the plaintiff herself has not shown any keen interest in pursuing the matter by launching any final decree proceedings, pursuant to the exparte preliminary decree.

9. In light of the above circumstances and considering the relationship between the parties as well as the fact that the respondent has not chosen to initiate final decree proceedings, I am inclined to allow the revision petition in



order to afford an opportunity to the petitioner/defendant to contest the preliminary decree.

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10. Accordingly, the order dated 19.10.2024 passed in I.A.No.1 of 2023 in I.A.No.407 of 2018 in O.S.No.212 of 2011 passed by the learned Subordinate Judge, Poonamallee is set aside and the Civil Revision Petition stands allowed. Consequently, the learned Subordinate Judge, Poonamallee is directed to dispose of the I.A.No.407 of 2018 in O.S.No.212 of 2011, within a period of four (4) weeks from the date of receipt of a copy of this order. No costs.

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

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P.B.BALAJI J.

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