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C.M.A.No.3426 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2026

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THE HONOURABLE MRS JUSTICE R. KALAIMATHI

C.M.A.No.3426 of 2025

and

C.M.P.No.28950 of 2025

1.M.Venkatesan

2.Devakiammal

3.Parameswari

4.Gajalakshmi

.. Appellants / Defendants 1 to 4

Vs.

1.Kanchana

st
.. 1 Respondent/Plaintiff

2.N.Ramakrishnan

nd th
..2 Respondent / 5 Defendant

Prayer: This Civil Miscellaneous Appeal is filed under Section 43 Rule 1 of the Code of Civil Procedure to set aside the fair and decretal order dated 28.03.2025 in I.A.No.2 of 2024 in I.A.No.1 of 2022 in O.S.No.43 of 2012 on the file of the I Additional District and Sessions Judge, Vellore, Vellore District.

For Appellants : Mr.S.William



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JUDGMENT

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This Civil Miscellaneous Appeal is directed against the fair and decretal order dated 28.03.2025 made in I.A.No.2 of 2024 in I.A.No.1 of 2022 in O.S.No.43 of 2012 on the file of I Additional District and Sessions Judge, Vellore, Vellore District.

2. The petitioners are the defendants No.1 to 4 and the first respondent is the plaintiff and the second respondent, who is the tenant of the plaint schedule property, is the 5th respondent.

3. Parties are indicated herein as per their litigative status and ranking before the Trial Court.

4. The details of the affidavit in I.A.No.2 of 2024 in I.A.No.1 of 2022 in O.S.No.43 of 2012 are given in brief:

(i) The petitioners 1, 3, and 4 are the children of one deceased V.D.Munivel. The second petitioner, Devakiammal is the wife of the said deceased V.D.Munivel. The first respondent, Kanchana is the daughter-in-law of the said Munivel and Devakiammal.



(ii) One Partheeban S/o Devakiammal, the second petitioner, married the plaintiff in the year 2009. The said Partheeban died intestate on 21.04.2010 without any issues. The plaintiff has filed the suit for partition of 6/15 shares in the suit properties.

(iii) While the suit was pending, it is stated that as all the petitioners/defendants were suffering from fever, they did not appear before the Trial Court. Due to the boycott, the Advocate did not appear before the Trial Court. Consequently, the Trial Court decreed the suit as prayed for.

(iv) Thereafter, the defendants took out application under Section 5 of the Limitation Act in I.A.No.17 of 2017 and it was dismissed on 09.03.2017. As against the said order, revision was preferred before this Court by the defendants in C.R.P.No.1844 of 2017 and it was allowed by this Court. After receipt of the order of the High Court, Interlocutory Application was renumbered as I.A.No.1 of 2022. On 05.02.2024, the petitioners/defendants did not appear before the Trial Court due to severe fever. The said application was dismissed for default on 05.02.2024. Thereafter, application was filed to restore I.A.No.1 of 2022 on file.



5. Details of the counter affidavit filed by the first respondent/plaintiff are given in brief:

The petition averments are denied and they are false. The application was filed to protract the proceedings and waste the time of the Court. The said order was challenged by way of revision, and it was allowed by this Court. The Trial Court choose to dismiss the petition by observing that no document is produced to make out of prima facie case and no reason is stated for the absence of the petitioner for long time.

6. Discussion :

One Munivel and the second defendant/Devakiammal have two sons, namely, plaintiff's husband Partheeban and M.Venkatesan/first defendant and two daughters, Parameswari and Gajalakshmi (Defendants 3 and 4). Fifth defendant is the tenant of item No.1 of the plaint 'A' schedule property. Plaintiff Kanchana is the wife of the above said deceased Partheeban. She has filed a suit for partition seeking 6/15 share in the plaint 'A' schedule property and directing the defendants 1 to 4 to return plaint 'B' and 'C' schedule properties or value of the said properties to the plaintiff.

7. It is learnt that when the suit was pending for trial, as the defendants 1 to 4 did not appear before the Trial Court, ex-parte judgment was passed by the Trial Court. Hence, the defendants 1 to 4 took out an application under



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Section 5 of the Limitation Act in I.A.No.17 of 2017 and the same was dismissed by the Trial Court on 09.03.2017. Against the said order of the Trial Court, revision was preferred before this Court in C.R.P.No.1844 of 2017 and it was allowed and the said petition was taken out on file in I.A.No.1 of 2022. Again, due to the absence of the defendants 1 to 4, the said application was dismissed for default on 05.02.2024. Thereafter, to restore the said application, I.A.No.2 of 2024 was filed by the defendants. The reason mentioned in the affidavit is that as all the petitioners were suffering from viral fever, they were unable to appear before the Trial Court. Besides that, Advocates were Boycott.

8. Originally, the suit was instituted by the sole plaintiff, Kanchana W/o Partheeban in the year 2011 (O.S.No.45 of 2011). In the year 2016, as the defendants 1 to 4 did not appear before the Court, they were set exparte and the exparte decree was passed on 05.07.2016. Against which, application under Section 5 of the Limitation Act was filed and it was dismissed by the Trial Court. Thereafter, upon revision before this Court, it was ordered to be allowed. Thereafter, when the matter was pending for trial, again due to the non-appearance of the defendants, they were set exparte.

9. The reason mentioned by the defendants is that all were suffering from fever and hence, they were unable to appear before the Trial Court.



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10. As rightly pointed out by the first respondent/plaintiff, the petitioners/defendants 1 to 4 did not have interest to conduct the trial and the reasons mentioned in the affidavit can never be taken as a reasonable cause for their appearance. More so, the Trial Court in proper perspective, has dismissed the application. This Court does not find any infirmity or perversity in the order of the Trial Court. This Court also does not find any good reason to upset the finding of the Trial Court.

11. Above being the position, this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.02.2026

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No

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Copy to

1.The Additional District and Sessions Judge,
Vellore, Vellore District.

2. The Section Officer,
VR Section,
High Court, Madras.



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R. KALAIMATHI, J.

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