WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-11-2026

CORAM

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE GK.MUTHUKUMAAR

OSA No.188 of 2026

CNR: {HCMA012224892026}

G. Vanithamani

..Appellant(s)

Vs

Case QR

G. Sarveswaran (Died)

1. G.Dayanithy
2. G.Surya Prabha
3. S.Saraswathy
4. S.Mohanraj
5. Selvi S.Priyanka (minor)

   Rep by her mother G.Saraswathy
   as next friend and Natural Guardian

..Respondent(s)

Original Side Appeal is filed under Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of the Letters Patent, to set aside the order passed in Application No.1938 of 2026 in O.P.No. 429 of 2004 dated 18.08.2026 on the file of the learned Single Judge.

For Appellant(s): Mr.Suresh Sampath for Ms.R.Ramya

For Respondent(s): Mr.S.Rajendrakumar for
M/s.Norton And Grant for R1 & R2
Mr.C.Shankar for R3 to R5

https://www.mhc.tn.gov.in/judis

WEB COPY

JUDGMENT

(Judgment of the Court was delivered by N.Sathish Kumar J.)

The present Original Side Appeal has been filed challenging the order dated 18.08.2026 passed by the learned Single Judge in Application No.1938 of 2026 in O.P. No.429 of 2004, dismissing the application seeking to condone the delay of 1535 days in filing the application to restore the Original Petition.

2. The brief facts leading to the filing of the present appeal are as follows: The appellant filed O.P.No.429 of 2004 seeking probate of the registered Will dated 09.01.1998, said to have been executed by her father, D. Gengiah Naidu. The Original Petition was filed in the year 2002. It was initially dismissed for default on 09.04.2011 and was subsequently restored by order dated 20.06.2011 in Application No.2713 of 2011. Thereafter, the Original Petition was again dismissed for default on 03.01.2022.

3. According to the appellant, due to the COVID-19 pandemic, she was unable to contact her advocate. During the year 2022, she underwent a cataract operation. In the year 2023, she was admitted to Vijaya Hospital, Vadapalani, on account of a cardiac ailment and underwent angioplasty, during which a stent was fixed. Owing to her health issues and family problems, she

https://www.mhc.tn.gov.in/judis

WEB COPY

suffered from depression and underwent psychiatric treatment. Consequently, she was unable to contact her advocate and follow up on the proceedings.

4. The appellant would further state that on coming to know about the proposed auction of the property through a WhatsApp status, she contacted her advocate through the mobile number 9941749420. Thereafter, she came into contact with another advocate, Mr. H. Surendran, and was informed that the erstwhile advocate engaged by her, Mr. Vinobha Gandhi, had passed away on 29.12.2022. She was also informed that the application to restore the Original Petition had not been filed. Hence, she filed the application seeking condonation of the delay of 1535 days. The said application was opposed by the respondents contending that the delay had not been properly explained. Accepting the objections raised by the respondents, the learned Single Judge dismissed the application. Aggrieved by the same, the appellant has filed the present Original Side Appeal.

5. Heard the learned counsel on either side and perused the materials available on record.

https://www.mhc.tn.gov.in/judis

WEB COPY

6. The point that arises for consideration is whether the appellant has shown sufficient cause for condoning the delay of 1535 days in filing the application to restore O.P. No.429 of 2004.

7. The expression "sufficient cause" occurring in Section 5 of the Limitation Act has to be construed liberally so as to advance substantial justice. The Court is required to consider the explanation offered by the party, keeping in mind that a justice-oriented approach is to be adopted while considering an application for condonation of delay.

8. Admittedly, the Original Petition has been filed seeking probate of a registered Will. The genuineness and validity of the Will have to be decided in the manner known to law. Though the respondents appear to have filed a partition suit in the year 2015, no issue with regard to the Will appears to have been framed in the said suit. A preliminary decree also appears to have been passed in O.S. No.2278 of 2015. Be that as it may, the proceedings in the partition suit cannot, by themselves, conclude the question relating to the validity of the registered Will, which is the subject matter of the Original Petition.

https://www.mhc.tn.gov.in/judis

WEB COPY

9. The appellant has explained the circumstances which prevented her from pursuing the proceedings. In particular, she has referred to her cardiac treatment and the psychiatric treatment undergone by her on account of depression. The said contentions relating to her medical condition have not been disputed in the counter affidavit. It is also not in dispute that the erstwhile counsel engaged by the appellant passed away on 29.12.2022.

10. The appellant has further stated that after coming to know about the dismissal of the Original Petition, she contacted the advocates concerned and took steps to restore the same. Though there was a delay in taking such steps, having regard to the reasons stated by the appellant, particularly her medical condition and the circumstances relating to the death of her erstwhile counsel, we are of the view that the delay has been sufficiently explained.

11. In the facts and circumstances of the case, we are of the view that one more opportunity can be given to the appellant to agitate the matter on the basis of the registered Will. The rights and contentions of the respondents can be considered on merits in the Original Petition, after giving them an opportunity to contest the proceedings.

https://www.mhc.tn.gov.in/judis

WEB COPY

12. Accordingly, the delay of 1535 days in filing the application to restore O.P. No.429 of 2004 is condoned, subject to the appellant paying costs of Rs.10,000/- (Rupees ten thousand only) to the respondents within a period of one week from today.

13. The respondents are at liberty to enter appearance, file a caveat, if so advised, and contest the matter in accordance with law. Having regard to the fact that the Original Petition has been pending from the year 2002, the learned Single Judge is requested to dispose of the Original Petition as expeditiously as possible.

14. Accordingly, this Original Side Appeal is allowed. No costs.

(N.S.K.,J.) (G.K.M.,J.)
17-11-2026

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

VKR

To

The Sub Assistant Registrar (Original Side),
High Court of Madras, Chennai.

https://www.mhc.tn.gov.in/judis

WEB COPY

N.SATHISH KUMAR, J.
AND
GK.MUTHUKUMAAR, J.

VKR

OSA No. 188 of 2026

17-11-2026

https://www.mhc.tn.gov.in/judis