



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.01.2026

Pronounced on: 13.02.2026

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CMP. No.26805 of 2025
in AS.SR. No.161303 of 2024**

Smt.Lakshmi (died)
Smt.Bhagyam
1.Smt.A.Shanthi
2.Mrs.K.P.Kamatchi
3.Mrs.P.Shanmughadevi
4.Mr.P.Kumaravel

Petitioner(s)

Vs

1.T.Radhakrishnan
2.K.P.Kandasamy
3.K.S.Deepakkumar
4.M.Palanisamy
5.R.Thangarathinam
6.Smt.Sivakami
7.S.Karthikeyan

Respondent(s)

PRAYER: This Civil Miscellaneous Petition is filed under Section 5 of the Limitation Act, 1963, to condone the delay of 2366 days in filing the present Appeal Suit bearing SR. No.161303 of 2024 filed before this Court.

For Petitioners : Mr.Nithyaesh Natraj for
Mr.Anirudh A Sriram
For Respondents : Mr.K.V.Babu for R1
No Appearance for R2 to R7



ORDER

The above civil miscellaneous petition has been filed seeking condonation of a delay of 2366 days in preferring the First Appeal against the decree in OS.No.6 of 2008. The revision petitioners are the plaintiffs in the suit, who are claiming a relief of partition.

2. I have heard Mr. Nityaesh Natraj for Mr. Anirudh A. Sriram, learned counsel for the petitioner and Mr.K.V.Babu, learned counsel for the contesting 1st respondent. I have also gone through the records including the typed set of papers, besides also the decisions that has been relied on by the learned counsels on either side.

3. Mr. Nityaesh Natraj, learned counsel for the petitioner, while fairly conceding that the delay is certainly long, being 2366 days, would however state that the valuable rights of the plaintiffs in immovable property should not be deprived or denied and the delay ought to be condoned. He would further state that the entire period of delay has been properly explained in the affidavit in support of the application. In this regard, he would take me through paragraph Nos.15 to 20 of the affidavit in the above CMP. The learned counsel would also forward a copy of the



Encumbrance Certificate applied on 16.03.2024 which has triggered the cause 101 challenging the decree in the suit.

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4. Mr Nityaesh Natraj, learned counsel for the petitioner would also state that the decree of the Trial Court is directly in conflict with the ratio laid down by the Hon'ble Supreme Court in *Vineeta Sharma vs. Rakesh Sharma & ors.*, reported in (2020) 9 SCC 1 and the female heirs cannot be deprived of their legitimate interest in the family property. The learned counsel also places reliance on the decision of Hon'ble Supreme Court in *Inder Singh vs. State of Madhya Pradesh*, reported in (2025) SCC Online SC 600 and in *CMP. (Madurai).No. 1391 of 2023 in the case of the State of Tamil Nadu (rep by the District Collector, etc) v. P. Ramannathan Chettiar and others dated 23.10.2025*.

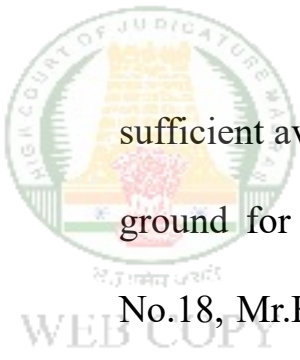
5. Placing reliance on the above decisions, the learned counsel would contend that when the Hon'ble Supreme Court held that a liberal approach sub-serving the cause of justice has to be adopted and the physical running of time should not be the criteria, but the real test is as to whether the reason of delay is on account of any negligence on the part of the petitioner which leads to an inference that he has given up his claim. This decision was in fact relied on by this Court in *P. Ramannathan*



Chettiar's (referred herein supra) case, where a delay of 11926 days was condoned in preferring a Second Appeal.

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6. Per contra, Mr.K.V.Babu, learned counsel appearing for the first respondent would at the outset contend that the Court, at the stage of considering an application for condonation of delay, cannot go into the merits of the appeal and the scope of enquiry should be limited to the aspect whether the petitioner has made out sufficient cause and explained the delay to the satisfaction of the Court. In this regard, inviting my attention to paragraph Nos.15 to 22, Mr.K.V.Babu, learned counsel for the 1st respondent would state that the petitioners have attempted to supplant multiple reasons in order to attempt to explain the inordinate delay of more than 7 years. As regards paragraph No.15, Mr K.V.Babu, learned counsel would state that the self-serving claims regarding health ailments have not been established by filing relevant documentary evidence. As regards averments in paragraph No.16, he would state that the petitioners attempts to blame the erstwhile Counsel and contended that this Court as well as the Hon'ble Supreme Court has repeatedly come down heavily on litigants blaming the Counsel for their negligence and inaction. Referring to the averments in paragraph No.17, Mr.K.V.Babu, learned counsel would state that if at all the petitioners were hard pressed for funds to fund the litigation, there are more than



sufficient avenues open in law to file cases and appeals and therefore, this cannot be a ground for condoning the delay of 2366 days. Insofar as averments in paragraph No.18, Mr.K.V.Babu, learned counsel would state that the petitioners who are guilty of delay of 2366 days, are attempting to shift the blame on the 1st respondent as if he had promised in sugar coated words to settle the matter and however, never kept up his word. Referring to the counter affidavit, Mr.K.V.Babu, learned counsel for the 1st respondent would state that all the self-serving averments have been vehemently denied by the 1st respondent and there is absolutely no merit in the application for condonation of delay.

7. On his part, in order to fortify his submissions Mr.K.V.Babu, learned counsel has relied on the decision of the Hon'ble Supreme Court in *H.Guruswamy & Ors. Vs. A.Krishnaiah (Since Deceased by LRS)*, reported in (2025) SCC Online SC 54, where the Hon'ble Supreme Court held that the rules of limitation are not meant to destroy the rights of parties, but meant to see that parties do not resort to dilatory tactics and seek remedy promptly. The Hon'ble Supreme Court further held that the length of delay would certainly be a relevant matter for consideration and the parties seeking condonation of delay cannot be allowed to fix their own period of limitation and that once a party has lost its right to have the matter considered on merits because of inaction for a long period, then there can be no presumption that the delay is not



deliberate and that substantial justice deserves to be preferred as against technical considerations.

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8. After elaborately discussing all the earlier decisions of the Hon'ble Supreme Court, touching Section 5 of the Limitation Act and considering the ratio laid down in *Inder Singh's case*, the Hon'ble Supreme Court in *Shivamma (dead) by LRs. Vs. Karnataka Housing Board and others*, reported in (2025) SCC Online SC 1969 held that it is no more *res integra*, that law of limitation has to be applied with all its rigor, even if it may affect a particular party harshly and that an application seeking condonation of delay has to be decided only within the parameters laid down by the Hon'ble Supreme Court, viz., where there was no sufficient cause to prevent a litigant to approach the Court in time, condoning the delay without any justification on lofty ideals would amount to passing an order in violation of the statutory provisions, tantamounting to utter disregard the statute itself. In *Inder Singh's case*, (referred herein supra), a two-pronged inquiry is required by the Appellate Court, first to ascertain the existence of "sufficient cause" and secondly, into the exercise of discretion itself, where the first test is satisfied. It has been further held that once the material on record lends support, the view arrived at by the Court below, the inquiry of the Appellate Court into the material on record ends and what remains is only the



exercise of discretion by the Court below, which would warrant a careful and delicate approach from the Appellate Court.

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9. From the impugned order, I find that the Court below has not dealt with the Application in a mechanical or routine manner or without any application of mind, and when the exercise undertaken by the Appellate Court is not patently wrong, this Court should not interfere, even if there is a different opinion that can be substituted to the exercise of discretion.

10. Keeping the ratio laid down in the above cases in mind and testing the affidavit filed in support of application for condonation of delay, I find that the petitioners are admittedly aware of the judgment of the Trial Court and even according to them within a span of 2 days, a certified copy of judgment and decree was applied and it was also made ready on 25.06.2018. The petitioners also admit that their Counsel received the certified copies but however, they claim that the certified copies were misplaced by their Advocate. In order to substantiate these self-serving claims, no supporting affidavit of the Counsel on record is filed. As rightly contended by Mr.K.V.Babu, learned counsel, it has become a fashion these days for litigants to make accusations and allegations against the Advocates who earlier



handled the matter. In fact, I had an occasion to deal with a case where blame was thrown on the lawyers in

in *Chitravel and another Vs. Jothimani*, reported in 2024 (2) CTC 197, where I held as follows:-

“13. Coming to the reason cited by the respondent in his application for condonation of delay of close to 5 years, they are that the trial Court Advocate did not inform him about the passing of the decree. Clearly, the respondent has played a blame game, accusing his trial Court Advocate of not informing him about the proceedings, especially, the factum of the suit being dismissed, after trial. As already referred herein above, this Court has consistently held that the negligence of the Advocate cannot be held to be a sufficient or just cause to entertain a condonation of delay application, as equally a duty is cast on the litigant, who is supposed to diligently follow up his case or her case with the lawyer. One another alarming factor is that such affidavits accusing lawyers is sadly gaining popularity. It is not a healthy trend. Behind the back of the lawyer who conducted the case, allegations are made in the affidavit, by engaging another counsel and citing the said reason that the Advocate or the Advocate's clerk did not inform the party, applications are being routinely filed before the court, seeking condonation of delay. Only in order to assess the bonafides or truth in the averments and allegations made in this regard, the Courts are constrained put riders on such applications by insisting of production of any complaint made by the litigant against the Advocate before the Bar Council. Practically, it is understandable that in all cases it may not be possible for the litigant to approach the Bar Council and file complaint against the Advocate for various reasons. Even lawyers, who are engaged subsequently, would be embarrassed to take such action. However, the applicant casually blames the counsel who conducted the trial, especially behind the Counsel's back and gets a favourable order from the Court, condoning huge and inordinate delay. It is one thing to state that no prejudice would be caused to the petitioners if the delay is condoned and the appeal is heard on merits. When such a reason is thrust before the Court, it virtually goes unchallenged as the opposite party is not privy to the advocate-client relationship of the applicant. However, when the applicant is unable to show any just or sufficient cause and the only reason cited for the delay of approximately 5 years is blaming his advocate, then the Court should not entertain such an application.”



11. Very recently, the Hon'ble Supreme Court in a very elaborate judgement in *Shivamma (dead) by Lrs. Vs. Karnataka Housing Board and others*, reported in 2025 SCC Online SC 1969, as already discussed, after considering the decision in *Inder Singh's case* (referred herein supra) as well, has reiterated that at the stage of condonation of delay, the Court can only consider the issue of sufficient cause being shown or not and should not delve into the merits of the claim. It has also been reiterated the legal position that while considering an application for condone delay, the Court cannot go into the merits of the appeal or suit and the condone delay application has to be tested only on whether the sufficient cause is shown or not, has also been reiterated.

12. The suit for partition does not involve payment of any substantial Court fees, even in the original suit the plaintiffs/appellants have only paid a total sum of Rs.2,032/- as Court fees and therefore, I am unable to countenance the submissions of learned counsel Mr. Nityaesh Natraj, that the appellant were not able to muster the necessary expenses to file the First Appeal for close to 7 years.

13. As regards the alleged settlement offered by the 1st respondent, the 1st respondent has stoutly denied the allegations that the 1st respondent had promised to



amicably settle the matter. In view of such denial, I am unable to accept the reasons assigned by the petitioners in this regard.

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14. As regards the averment that after promising to settle the matter, the 1st respondent has surreptitiously executed a settlement deed in favour of his wife in the year 2022 and the same came to the knowledge of the petitioners only upon verification of online EC and immediately thereafter, fresh Copy Application was made before the Trial Court and the Appeal has been filed thereafter, without any further delay. Though copy of the online Encumbrance Certificate dated 16.03.2024 has been produced before me to evidence the Encumbrance on 17.08.2022 by the 1st respondent in favour of his wife, I am unable to see how the said factum of an Encumbrance Certificate having been applied would come to the rescue of the petitioners in seeking condonation of delay of 2,366 days.

15. There is nothing in the affidavit which discloses the reason as to why the petitioners were even constrained to apply for an Encumbrance Certificate in the first place. Admittedly, one of the items of property has been settled even in August 2022 and in all probability, the Encumbrance Certificate could have been applied for, even to bring about a cause for getting over the delay in approaching the Court.



I, therefore, do not see how the act of the petitioners in seeking for an Encumbrance Certificate, out of the blue in March 2024 can establish less sufficient cause.

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16. As held by the Hon'ble Supreme Court in *Guruswamy's* case as well as *Shivamma's* case, (referred herein supra), the length of delay is certainly a factor that needs to be considered and the Court dealing with an application for condonation of delay cannot start with the merits of the matter and the Court is concerned at that stage only with sufficient cause being shown for the delay. The petitioners have not shown any cause, much less sufficient cause and in the light of the above, I am not obligated to go into the merits of the grounds raised in the appeal, challenging the dismissal of the suit for partition at this juncture in order to condone the delay.

17. For all the above reasons, the Civil Miscellaneous Petition deserves to be dismissed. Accordingly, the Appeal Suit is also dismissed at the SR stage itself. No costs.

13.02.2026

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Neutral Citation Case : Yes/No

Internet: Yes/No

Index : Yes/No

To:

The 1st Additional District Court, Coimbatore.



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P.B.BALAJI, J.,

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Pre-delivery order in
CMP. No.26805 of 2025
in AS.SR. No.161303 of 2024

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