

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.02.2026

Pronounced on: 13.02.2026

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. No.469 of 2026
and CMP. No.2708 of 2026**

Chinnasamy

Petitioner(s)

Vs

Rani

Respondent(s)

PRAYER: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and decretal order in I.A. No.1 of 2023 in O.S. No.188 of 2014 dated 19.06.2024 passed by the Principal Sub Court, Dharmapuri.

For Petitioner : Mr.B.Gopalakrishnan

For Respondent : Mr.N.Venkatesh

ORDER

The second defendant, being unsuccessful in seeking condonation of delay of 2156 days in filing the application to set aside the ex-parte decree, is the revision petitioner.



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2. I have heard Mr.B.Gopalakrishnan, learned counsel for the petitioner and Mr.N.Venkatesh, learned counsel for the respondent.

3. Mr.B.Gopalakrishnan, learned counsel for the revision petitioner would firstly contend that the delay was not 2156 days, but only 1429 days on account of the exemption granted by the Hon'ble Supreme Court, taking into account the COVID pandemic. He would further state that the petitioner is none else than the brother of the respondent and only on account of serious illness, the petitioner was incapacitated from appearing and defending the suit and he would therefore, pray for an opportunity to be given to contest the suit on merits, stating that the petitioner is willing to co-operate for expeditious hearing and trial of the suit and also for being put on appropriate terms to prejudice caused to the respondent on account of the delay in seeking to set aside the ex-parte decree.

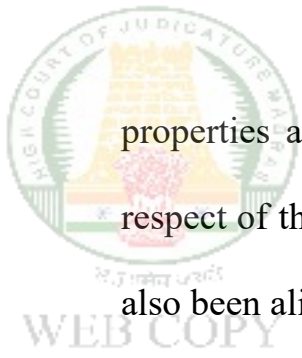
4. The learned counsel for the petitioner has also relied on an additional typed set of papers containing medical records pertaining to the revision petitioner. Taking me through the affidavit in I.A.No. 1 of 2023, Mr.B.Gopalakrishnan, learned counsel would state that the averments set out in the affidavit are established to be true and genuine by production of the medical records and therefore the Court should adopt a liberal approach while dealing with the condone delay application.



5. Per contra, Mr.N.Venkatesh, learned counsel for the respondent would state that the petitioner has not been able to give any particulars with regard to the delay right from the date of the ex-parte decree and even the medical records that are filed, are only after February 2021. He would therefore state that for four years prior to February 2021, considering that the ex-parte decree was passed in June 2017, the affidavit was totally bereft of necessary particulars and rightly, the Trial Court has refused to exercise discretion to condone delay in favour of the petitioner. He would therefore pray for the revision being dismissed.

6. I have carefully considered the submissions advanced by the learned counsel on either side.

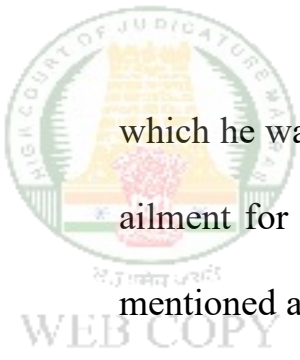
7. The respondent as plaintiff filed O.S.No.188 of 2014 seeking partition and also a declaration that the sale deed executed by the revision petitioner in the same name of the sixth defendant, is null and void. The petitioner admittedly did not contest the suit and an ex-parte preliminary decree was passed on 30.06.2017. Contending that the revision petitioner performed the marriages of all his sisters and that he alone was in management and control of the entire properties and that even after the demise of the father, an oral partition had taken place and plaintiff herself was allotted specific properties, the petitioner sought to set aside the ex-parte decree. It is contended by Mr.Gopalakrishnan, learned counsel that conveniently the respondent has left out the



properties allotted to her at the oral partition and has chosen to seek for partition in respect of the properties allotted to the revision petitioner alone, one amongst which has also been alienated in favour of the sixth defendant.

8. Without even going into the merits, this Court has to necessarily see if the petitioner has made out sufficient cause for being entitled to an order of condonation of delay. The length of delay would become inconsequential and immaterial, if the petitioner seeking condonation makes out sufficient cause for non-appearance on the assigned date and satisfactorily explains the delay thereafter. In this context, on going through the affidavit filed in support of the application for condonation of delay, I find that the petitioner claims that he was suffering from serious neurological illness and was taking native treatment and subsequently, he had heart problems for which he took treatments at Dharmapuri and thereafter, at Bangalore. It is also averred in the affidavit that the respondent/plaintiff assured the petitioner that she would not pursue the suit and giving these reasons, the petitioner sought for the delay to be excused.

9. As rightly pointed out by learned counsel Mr.Venkatesh, the medical records that are filed are only after February 2021. Admittedly, the ex-parte decree was passed on 30.06.2017. Paragraph No.4 of the affidavit, on which heavy reliance is placed on by the learned counsel for the petitioner is bereft of any particulars whatsoever. In general statements are made that the petitioner was suffering from neurological problems for



which he was taking ayurvedic treatment and that thereafter, he was suffering from health ailment for which he was taking treatment at different hospitals. Time periods are not mentioned and considering the additional typed set that is now filed, the medical records are only on and from February 2021. In fact, these medical records have also not been exhibited before the Trial Court and are filed for the first time, before this Court in revision. In any event, the delay between 30.06.2017 and January 2021 remains still unexplained. In such a scenario, the petitioner is certainly not entitled to any indulgence or equity for even the Court to consider the merits of the matter as a ground to grant an opportunity to the petitioner to contest the suit on merits. In fact, the only defence that is raised in the written statement filed along with the set-aside application is that there has already been an oral partition and even the plaintiff/respondent herein was allotted properties in the said oral partition.

10. However, when I quizzed the learned counsel for the petitioner as to whether there is any proof of the oral partition having been acted upon by following up with the Revenue Authorities for mutation of revenue records, the learned counsel for the petitioner states that the properties are still mutated in the original names and there is no evidence to show that the oral partition has been acted upon. Therefore, even on this ground, I did not see any merit in the defence raised by the revision petitioner. A suit for partition for share by the daughter in her father's estate has been filed and none of the



other sisters who are also entitled to respective shares in the property have sought to oppose the claim of the respondent/plaintiff.

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11. In the light of the above, the Petitioner has not been able to make out good or sufficient cause to become entitled to a favourable order under Section 5 of the Limitation Act. I do not see any perversity or infirmity in the findings arrived at by the Trial Court warranting interference in the revision.

12. In fine, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. No costs.

13.02.2026

rkp

Neutral Citation Case: Yes/No

Internet: Yes/No

Index: Yes/No

To:

The Principal Sub Judge, Dharmapuri



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P.B.BALAJI, J.,

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Pre-delivery order in
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