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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2026

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. No.946 of 2026
and CMP. No.5060 of 2026**

Rangasamy (Died)
Ramasamy (Died)
Pongiammal (died)
1.Santhamani
2.Nagamani
3.Jeya
4.Sumathi
5.Rajeswari
6.Rajammal
7.Shanmugam
8.Kanthamani
9.R.Palanisamy
10.Loganathan
11.Bhuvaneswaran

Petitioners

Vs

K.Nanjammal

Respondent(s)

PRAYER: This Civil Revision Petition is filed under Section to set aside the fair order and final order dated 05.02.2025 passed in I.A. No.1 of 2022 in O.S. No.260 of 2008 by the learned District Munsif, Sathyamangalam, Erode District.

For Petitioners : Mr.J.Titus Enock

For Respondents : Mr.Roshan Atiq



ORDER

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The revision petitioners are the defendants in OS.No.260 of 2008 on the file of the District Munsif, Sathyamangalam, Erode.

2. An application in I.A.No. 1 of 2022 seeking condonation of delay of 3845 days in filing the application to set aside the ex-parte decree was sought to be condoned. The Trial Court dismissed the said application, after due inquiry, by order dated 05.02.2025. The said order is now under challenge in the present revision petition.

3. I have heard Mr.Titus Enock, learned counsel for the revision petitioners and Mr.Roshan Atiq, learned counsel for the respondent.

4. Mr.Titus Enock, learned counsel for the revision petitioners, would state that the defendants 1 and 2 were alone actively contesting the suit on behalf of all the other defendants and that the 3rd defendant was bedridden on account of his advanced age and the 1st defendant had to additionally take care of the 3rd defendant as well. The learned counsel would further state that the 3rd defendant passed away within a few months from the date of passing of the decree and even the defendants 1 and 2 died on 19.05.2016 and 27.07.2016. It was only after the petitioners received notice in the final decree application that



they immediately met their Advocate and filed the application to set aside the ex-parte decree as there was a delay of 3845 days, an application under Section 5 was also taken out. The learned counsel would therefore state that when the petitioners had sufficiently explained the reasons for not filing the Application to set aside the ex-parte decree in time, the Trial Court ought not to have dismissed the application. He would therefore pray for an opportunity to be given to the petitioners to contest the decree passed ex-parte.

5. Per contra. Mr. Roshan Atiq, learned counsel for the respondent/plaintiff would firstly contend that the 3rd petitioner was very much alive till the passing of the ex-parte decree and she died only on 13.04.2011, after two months from the date of the ex-parte decree. According to Mr. Roshan Atiq, even assuming the defendants 1 and 2 were also ill and they were only taking care of the suit, nothing prevented the 4th defendant, Shanthamani, who is 1st revision petitioner herein to have diligently followed up the matter on account of inability of the defendants 1, 2, 3. He would therefore state that the petitioners cannot be allowed to contend that, immediately after receipt of notice in the final decree application, they have filed the application to set aside the ex-parte decree. The learned counsel would therefore pray for dismissal of the revision.



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

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7. A suit was filed by the respondent herein against four defendants. Admittedly, defendants 1 to 3 are now no more. However, the 4th defendant is the 1st petitioner in the revision petition. A suit has been filed for partition and separate possession, nothing prevented the 1st petitioner to have stepped in and defended the suit, if at all defendants 1, 2, 3 had been rendered incapable because of alleged health reasons to continue to defend the suit. The reason that immediately after notice in the final decree application, the condone delay application and application to set aside the ex-parte decree were filed is of no avail for the simple reason that the 1st petitioner was arrayed as a defendant in the suit and she was admittedly served with summons and therefore, it is not open to the 1st petitioner to take advantage of service of notice in the final decree application and state that she was not aware of the decree being passed.

8. I find from the ex-parte decree that the 4th defendant was also represented by a counsel and by merely joining hands with the legal representatives of the other defendants, the 1st petitioner cannot attempt a piggyback ride on the ground that the petitioners came to know about the ex-parte preliminary decree only after receipt of notice in the final decree application. In fact, by joining hands with the 1st petitioner, the legal



representatives of the deceased defendants 1, 2, 3 have only complicated their own case and they also cannot contend that they were unaware of pendency of the suit and therefore, their Application to set aside the ex-parte decree was justified and proper reasons have been adduced.

9. The trial court has rightly considered the length of delay, the reasons assigned and came to a conclusion that the petitioners have not shown any sufficient cause warranting exercise of discretion in their favour. I do not see any illegality or perversity in the finding arrived at by the Trial Court warranting interference under revision.

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

23.02.2026

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Neutral Citation Case : Yes/No

Internet: Yes/No

Index : Yes/No

To:

The District Munsif, Sathyamangalam, Erode District.



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P.B.BALAJI, J.,

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