



C.M.P.(MD) No.7563 of 2025
in S.A.No.1389 of 1998

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 22.01.2026

CORAM

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

C.M.P.(MD) No.7563 of 2025
in
C.M.P.(MD) Sr.No.25496 of 2025
in
S.A.No.1389 of 1998

A.Devaraj ... Petitioner/Petitioner/Appellant

vs.

1.Indirani
2.Alagarsamy ...Respondents/Respondents/
Respondents

PRAYER: This Civil Miscellaneous Petition is filed under Order XLI Rule 19 of CPC to restore on file the application filed under Section 5 of Limitation Act in the restoration petition in C.M.P.(MD) No.1736 of 2016 and to set aside the order dated 06.01.2022 made in C.M.P.(MD) No.1736 of 2016 in S.A.No.1389 of 1998 of this Court.

For Petitioner : Mr.Ananth C.Rajesh
For Respondents : No appearance



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ORDER

This Civil Miscellaneous Petition is taken out by the first defendant in O.S.No.319 of 1994 under Section 5 of the Limitation Act, to condone the delay of 1139 days in filing the restoration petition in C.M.P.(MD) Sr.No. 25496 of 2025 and to restore the petition in C.M.P.(MD) No.1736 of 2016 in S.A.No.1389 of 1998 on the file of this Court.

2. The parties are indicated herein as per their litigative status and ranking before the Trial Court.

3. Originally, the plaintiff, Indirani, d/o, Alagarsamy, filed a suit for declaration of title and for direction to hand over the suit properties by the first defendant to her with mesne profits at the rate of Rs.60/- p.m.

4. The sum and substance of the plaintiff's case is that the suit property belongs to the plaintiff by virtue of the registered Exchange Deed dated 09.01.1950 executed between Nallaya Naickar and the plaintiff, represented by her mother, as she was minor then. The plaintiff's father had been managing the suit property on behalf of her. The plaintiff's mother is the first wife of her father Alagarsamy (second defendant). She



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was working at various places as Health Supervisor. Her father and the first defendant were managing the suit property on behalf of the plaintiff. The second defendant had fraudulently executed a registered gift deed dated 08.06.1993 in favour of the first defendant. The second defendant did not have right to convey the property. Hence, the said gift deed is a void document. The first defendant did not get any right over the suit property. The first defendant had been residing in the suit property and claims title to the same. Even upon issuance of notice by the plaintiff, the first defendant did not vacate and hand over the possession of the suit property to her. Hence, the suit.

5. *Per contra*, the first defendant would *inter alia* contend that it is incorrect to state that the suit property belongs to the plaintiff by virtue of exchange deed dated 09.01.1950. The plaintiff did not get any right in the suit property. The property was exchanged for a punja land measuring 1.47 acres in Kundalathur village. Property originally belongs to Ramasamy Naickar. He had two wives Lakshmiammal, Achammal. Achammal had one daughter called Lakshmiammal and Lakshmiammal had one daughter called Engammal. Ramasamy Naickar in and around in the year 1935 died leaving behind his first wife, Lakshmiammal and her daughter Engammal and the daughter of his second wife, Lakshmiammal.



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Therefore, Lakshmiammal, first wife of Ramasamy Naickar alone, was entitled to succeed to the properties of late Ramasamy Naickar as a limited owner. Daughters of Ramasamy Naicker did not have right in the property except as reversioners. Lakshmiammal, w/o Ramasamy Naickar for herself and as a guardian of her daughter Engammal effected a partition with Lakshmiammal, d/o Ramasamy Naickar, through his another wife Achammal under a registered partition deed dated 02.08.1945. In the said partition deed, the property mentioned above was allotted to the share of Lakshmiammal's daughter Achammal. As per partition deed, Lakshmiammal did not get absolute right, but only a limited right to enjoy the property over her lifetime. She had no right of alienation. Only the heirs of Lakshmiammal, after her lifetime would get the property absolutely. Both Lakshmiammal and Engammal married the second defendant, respectively. The first defendant is the son of the second defendant born through Engammal. Lakshmiammal, mother of the plaintiff had no male issue and died leaving the plaintiff as her sole heir. All the properties allotted to Lakshmiammal devolved upon the first defendant. The plaintiff never enjoyed the property allotted to the share of her mother. The defendants alone are in possession and enjoyment of the property in their own right. The plaintiff never questioned nor objected the same. The second defendant sold few properties and mortgaged some other



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properties. Out of ignorance of law, the second defendant and his wife Engammal exchanged the land for the suit property. The exchange would enure benefits to the defendants only and not to the plaintiff. The second defendant out of love and affection executed the settlement deed on 08.06.1993 in respect of the suit property in favour of the first defendant.

6. Whereas, the second defendant would contend that the suit property belongs to the plaintiff only. When the second defendant was ailing, the first defendant got a settlement deed executed by him under undue influence and coercion. The settlor does not have any right to settle the property on the date of settlement deed.

7. The Trial Court framed the relevant issues and upon consideration of the oral and documentary evidence and after hearing arguments advanced by either side, the Trial Court decreed the suit in favour of the plaintiff to the effect that she owns the property and the first defendant was directed to hand over the possession of the suit property to the plaintiff herein by granting three months time and in respect of means profit, suit was dismissed. Aggrieved, the first defendant preferred Appeal Suit before Principal District Judge, Kamaraj (Virudhunagar) District at Srivilliputhur in A.S.No.178 of 1995. The First Appellate Court, upon



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consideration of the entire case records, dismissed the Appeal Suit by confirming the judgment and decree of the Trial Court. Against which, the first defendant has preferred this second appeal before this Court in S.A.No.1389 of 1998.

8. When the matter came up on 03.12.2012, due to non-prosecution, the Second Appeal was dismissed. Thereafter, an application was taken out by the first defendant A.Devaraj, under Section 5 of Limitation Act to order to condone the delay of 1127 days for filing of restoration petition in order to restore the second appeal in S.A.No.1389 of 1998 on file. During the pendency of such application, the second respondent died and the petitioner Devaraj had taken out C.M.P.(MD) No.8448 of 2017 in order to implead the legal heirs. Despite grant of sufficient adjournments, notice was not taken to the legal heirs. Therefore, for not taking steps, C.M.P. (MD) No.1736 of 2016 was dismissed for non-prosecution on 06.01.2022.

9. Thereafter, another C.M.P.(MD) No.7563 of 2025 was taken out under Section 5 of the Limitation Act, to condone the delay of 1139 days in filing restoration petition in C.M.P.(MD) Sr.No.25496 of 2025 to restore petition in C.M.P.(MD) No.1736 of 2016 in S.A.No.1389 of 1988.



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10. The deponent would state that when he contacted his Counsel at Madurai, he was informed as this second appeal was dismissed for non-prosecution as early as on 03.12.2012.

11. The suit was filed by the plaintiff in the year 1994 and judgment was passed by the Trial Court on 10.03.1995. The Appeal Suit preferred by the first defendant Devaraj was dismissed on 09.01.1997. In the next year, the Second Appeal was filed before this Court. The Second Appeal was dismissed for non-prosecution in the year 2012. Thereafter, in order to restore the Second Appeal, one application after another is filed and they were not studiously pursued and left to be dismissed for non-prosecution. The reasons assigned by the deponent are not acceptable as he is squatting over the property for decades together without any legal basis. As the petition is devoid of merits, it is liable to be dismissed and thereby, this Civil Miscellaneous Petition stands dismissed.

22.01.2026

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



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To

1. The District Munsif,
Sattur.
2. The Principal District Judge,
Virudhunagar at Srivilliputhur.
3. The Section Officer,
VR Section,
High Court, Madras.



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R.KALAIMATHI, J.

apd

Order made in
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