



C.R.P.(MD) No.1744 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**DATED: 24.03.2026**

CORAM

**THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN**

**C.R.P.(MD) No.1744 of 2023  
and  
CMP(MD) No.8688 of 2023**

1.S.M.Sheikh Mansur

2.S.M.Naina Mohammed

3.S.M.Seiyathu Fathima

4.S.M.Shajitha Banu

... Petitioners

vs.

1.P.S.Mydeen @ Haja Mydeen,  
rep. through his power agent,  
N.M.Mohammed Yusuf

2.Sulaika Beevi

3.P.S.Sahul Hammed

4.P.S.Mohammed Mydeen

5.Jeenaththunnisha

6.Thilsath Begam

7.Mansura Begam

8.Ushmani



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Ahamed Meeral (died)

9.Rahman Beevi

Abulfaraak (died)

10.P.S.Hajar Fathima

11.M.A.Jabarullah

12.M.A.Iqbal

13.M.A.Kaleel Rahman

... Respondents

**PRAYER:** Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.17 of 2022 in O.S.No.172 of 2012 dated 27.10.2022 on the file of the Additional Subordinate Court, Tirunelveli.

For Petitioners : Mr.Pakiyamuthu for  
Mr.H.Arumugam

For R1 & R2 : Ms.V.Janaki Devi

For R3, R4, R8,  
R9 & R11 to R13: No appearance

For R10 : Mr.D.Nallathambi

### **ORDER**

This Civil Revision Petition challenges the order passed in I.A.No.17 of 2022 in O.S.No.172 of 2012, dated 27.10.2022, by the learned Additional Subordinate Judge, Tirunelveli.



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2.The Civil Revision Petitioners are the defendants 6 to 9. They filed an application under Order IX Rule 7 of the Code of Civil Procedure. The said application came to be dismissed by the learned Additional Subordinate Judge, Tirunelveli on 27.10.2022. Hence, this Revision.

3.Heard Mr.Pakiyamuthu for the petitioners, Ms.V.Janaki Devi for the respondents 1 and 2 and Mr.D.Nallathambi for the 10<sup>th</sup> respondent.

4.O.S.No.172 of 2012 is a suit for partition and separate possession. The Civil Revision Petitioners/defendants 6 to 9 are not the sharers, but they are the purchasers of the property. The suit was presented arraying them as parties. Despite service of summons, the defendants did not file their written statement. The defendants 6, 8 and 9 were set *ex parte* on 28.08.2012. The 7<sup>th</sup> defendant was set *ex parte* on 22.04.2013. The suit itself came to be dismissed for default on 20.01.2017.

5.The plaintiffs filed an application to restore the suit along with condonation of delay application. The application came to be



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dismissed on 15.02.2018. Finally, after this Court intervened in revision, the suit stood restored on 04.07.2022. It is thereafter, the defendants 6 to 9 filed applications to set aside the *ex parte* orders dated 28.08.2012 and 22.04.2013. By the impugned orders, the learned Judge dismissed the applications, stating that no explanation was given by the defendants for a period of 10 years and more.

6.The learned counsel on both sides reiterated the contentions they placed before the Court below.

7.Mr.Packiyamuthu urged that being purchasers of the property, in case, an *ex parte* order is not set aside, they will be put to irreparable loss and prejudice. In addition, he points out that they have also filed the written statement together with a counter-claim.

8.Ms.V.Janaki Devi urges that the applications have been filed only to drag on the matter and thereby, deny the plaintiffs' right to see the end of the suit.

9.I have carefully considered the submissions of both sides. I have gone through the records.



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WEB COPY 10. Though the submissions made on behalf of defendants 6 to 9 that the suit itself had been dismissed in the year 2017 and restored in the year 2022, is attractive at the first blush, but on a closer scrutiny, it is without any substance. The defendants 6, 8 and 9 & 7 had been set *ex parte* in August 2012 and April 2013, respectively. As to the reason why the application to set aside the *ex parte* order was filed after nearly 10 years has not been explained. The stage of the suit is that of the examination of P.W1 cross.

11. It is not for a litigant to walk in and walk out of a litigation, as and when he or she pleases. This is more so in the case of a purchaser of a property. In the case of a purchaser, he should be ever vigilant, in order, to prosecute the suit. This is because his vendor would not be interested to follow up with the suit, as he/she would have alienated whatever interest that they had over the suit property in favor of the purchaser.

12. Be that as it may, as the consideration for Order IX Rule 7 of the Code is only “good cause” and as the defendants 6 and 7 have presented their written statement together with a counter-claim and



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as the suit is still at the stage of P.W1 cross, I am inclined to consider this revision. For the delay caused in filing the application under Order IX Rule 7 of the Code, heavy cost can be imposed on the purchasers.

13.In the light of the above discussions, this Civil Revision Petition stands allowed. The order passed in I.A.No.17 of 2022 in O.S.No.172 of 2012, dated 27.10.2022, by the learned Additional Subordinate Judge, Tirunelveli is set aside on condition that the defendants 6 to 9 pay a sum of Rs.10,000/- to the plaintiffs within a period of two weeks from today. In case, the cost is not paid, the order passed by the Trial Court will stand restored and this Civil Revision Petition will stand dismissed. If the cost is paid, the learned Trial Judge is requested to receive written statement and the counter-claim. Consequently, connected Miscellaneous Petition is closed.

Index :Yes / No  
Internet :Yes / No  
NCC :Yes / No  
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**24.03.2026**

To

The Additional Subordinate Judge, Tirunelveli.

6/7



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**V. LAKSHMINARAYANAN, J.**

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