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C.M.P(MD)No.17249 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.02.2026

Pronounced on : 15.04.2026

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.P(MD)No.17249 of 2024

in

S.A(MD)SR.No.62884 of 2024

1. Varadharaj,
S/o.Perumal Chettiar,
Kambiliampatti,
Kottanatham Village,
Vedasandur Taluk,
Dindigul District.
2. Suresh,
S/o.Varadharaj,
Kambiliampatti,
Kottanatham Village,
Vedasandur Taluk,
Dindigul District.
3. Sridhar,
S/o.Late.Ramasamy,
Door No.14, Aathikrishnapuram,
Karur Town, Karur Taluk,
Karur District.

... Petitioners/Appellants

Vs.

1. Sayala,
W/o.Late.Mohan,
New Door No.129, Old Door No.114/115,
Katcheri Veedhi, Erode Town,
Erode Taluk,
Erode District.



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2. Subbiah,
S/o.Perumal Chettiar,
Kambiliampatti,
Kottanatham Village,
Vedasandur Taluk,
Dindigul District.
3. Raja,
S/o.Perumal Chettiar,
Kambiliampatti,
Kottanatham Village,
Vedasandur Taluk,
Dindigul District.
4. Muthulakshmi,
W/o.Late.Muthukrishnan,
Sevaikaranpatti,
Kottanatham Village,
Vedasandur Taluk,
Dindigul District.
5. Rajamanickam,
S/o.A.Karuppanapillai,
Vasanthakathirpalayam,
Kottanantham Village,
Vedasandur Taluk,
Dindigul District.

... Respondents/Respondents

PRAYER:Civil Miscellaneous Petition is filed under Section 5 of the Limitation Act, to condone the delay of 1219 days in filing the above said Second Appeal against the judgment and decree made in A.S.No.06 of 2015 on the file of the Principal District Judge, Dindigul, dated 30.01.2019, confirming the decree and judgment in O.S.No.57 of 2012 on the file of the Sub Judge, Vedasandhur, dated 28.11.2014.



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For Petitioners : Mr.H.Jahir Hussain
For R2 to R4 : Mr.B.Azhagesh
For R1 & R5 : No Appearance

ORDER

This Civil Miscellaneous Petition is filed to condone the delay of 1219 days in filing the Second Appeal against the judgment and decree, dated 30.01.2019, made in A.S.No.6 of 2015 on the file of the Principal District Court, Dindigul, confirming the decree and judgment in O.S.No.57 of 2012 on the file of the learned Sub Judge, Veda sandhur.

2.The petitioners have stated reasons in the accompanying affidavit filed along with the Second Appeal as follows:

The respondents 2 to 4 have filed the suit in O.S.No.57 of 2012 on the file of the Subordinate Court, Veda sandhur, for partition against the five defendants. The suit was decreed. Since the third defendant filed a first appeal, the petitioners have not filed any first appeal. The first Appellate Court rendered judgment on 30.01.2019, confirming the judgment and decree of the trial Court. The petitioners were informed by the third defendant that she had preferred the second appeal. But the petitioners learnt



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that she has not taken any steps to file the second appeal. The petitioners obtained certified copies of the judgment from the first Appellate Court and handed over the same to their counsel during August, 2019. As the advocate clerk left the office, his two successive advocate clerks were not able to trace out the case bundle. Recently, the petitioners met the previous advocate clerk, and on request, he traced out the case bundle. Hence, the petitioners were not able to file the Second Appeal within the stipulated time. Hence, there is a delay of 1219 days in preferring the appeal.

3.The 4th respondent filed a counter for herself and on behalf of the other respondents 2 and 3 and stated as follows:

These respondents filed the suit in O.S.No.57 of 2012 for partition of their 3/4th share, and a preliminary decree was passed by the trial Court on 28.11.2014. The first respondent herein, who is the third defendant, filed the first appeal in A.S.No.6 of 2015 before the Principal District Court, Dindigul, and the same was dismissed on 30.01.2019. Then, these respondents filed I.A.No.220 of 2020 for passing the final decree, in which the petitioners 1 and 2 were set ex-parte, and the third petitioner entered appearance through counsel on 02.11.2020 and filed his counter on 23.09.2021. Thereafter, the petition in I.A.No.220 of 2020 has been



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periodically adjourned. After a lapse of four years, the petitioners filed this petition to condone the delay of 1219 days in preferring the Second Appeal.

The petitioners, who are defendants 1, 2 and 5 have not challenged the preliminary decree and judgment passed by the trial Court. The petitioners filed a copy application on 01.08.2019 belatedly. The reasons stated by the petitioners that their advocate clerk left the advocate office in 2019, but he traced out the case bundle in 2024, are highly improbable. The explanation is insufficient. No prudent litigant would wait for five years to trace out a misplaced certified copy of the judgment. Even though the petitioners filed the second appeal with a delay condonation petition on 27.08.2024, they made a representation in the final decree proceedings in 2022 that the second appeal was already filed, which was reflected in the e-Court diary. The petitioners intend to drag the final decree proceedings by way of filing this petition to condone the delay of 1219 days with frivolous and false allegations. The petitioners have no valid reason in this petition. Therefore, the petition may be dismissed.

4. Heard both sides and perused the records in this Civil Miscellaneous Petition.



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5.The learned counsel for petitioners has argued that this case is for partition, so all parties are to be treated as plaintiffs. The provision of Order XLI Rule 4 of CPC says that any affected defendant may file an appeal. The petitioners have taken a plea of partial partition. The petitioners have stated reasons for the delay in their affidavit in paragraph Nos.4 to 7. The third defendant has filed the first appeal, so the petitioners did not file a separate first appeal. Since the third defendant has informed them that she was going to file the second appeal, the petitioners have not taken steps to file the second appeal, but later they learnt that the third defendant had not preferred the second appeal. These petitioners may be given an opportunity to substantiate their case, hence, the delay may be condoned.

6.Per contra, the learned counsel for the respondents 2 to 4 vehemently contended that the petitioners have not preferred any first appeal against the judgment and decree of the trial Court, so the decision of the trial Court became final as against these petitioners. The first Appellate Court dismissed the first appeal on 30.01.2019, after a lapse of 7 months, the petitioners have filed a copy application for preferring the second appeal and thereafter, the petitioners have filed this second appeal along with the delay condonation petition after expiry of 5 years from the copy application. In the meantime,



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these respondents have filed the execution petition and the petitioners were served notice, the third respondent, who is the 5th respondent therein, appeared through counsel. The learned counsel further submitted that without preferring the second appeal, the third petitioner represented that the second appeal was pending. These respondents filed an e-Court diary to substantiate these facts. When the petitioners failed to show sufficient cause for the delay, they were not entitled to seek condonation of delay. In support of the above arguments, the learned counsel for the respondents 2 to 4 has relied on the following citations:

**(1) AIR 1996 Madras 415 in the case of
Perumal /v/ Gurunathan & Ors.**

**(2) Order of this Court in C.R.P.(MD)No.
2789 of 2023, dated 12.12.2023 in the case of
Rajeswari and Ors. /v/ Rathinam (died) and
Others.**

7.On hearing both sides and on perusal of the records, there is no dispute that the preliminary decree was passed in O.S.No.57 of 2012 filed by the respondents 2 to 4/plaintiffs therein and the first appeal in A.S.No.6 of 2015 filed by the 3rd defendant against the preliminary decree was dismissed



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on merits on 30.01.2019. The petitioners who are defendants 1, 2 and 5 in the main suit remained ex-parte in the first appeal. Thereafter, the plaintiffs filed the final decree petition in I.A.No.220 of 2020 in O.S.No.57 of 2012, in which the petitioners 1 and 2 were set ex-parte and the third petitioner appeared through counsel, which is clear from the e-Court diary filed by the respondents 2 to 4. It is the main plea of the petitioners that since the third defendant filed the first appeal, they did not file a separate appeal and that since the parties in the partition suit are to be treated as plaintiffs. However, it is clear that the petitioners have not preferred any first appeal. The learned senior Judge of this Court rendered a verdict in the **Perumal case** reported in **AIR 1996 Madras 415**, clearly held that a litigant, who has not chosen to file a first appeal, cannot be permitted to file a second appeal challenging the judgment and decree as the same has become final against him. Though the ruling is squarely applicable to the facts of this case, this petition is filed to condone the delay, for which it is to be considered whether the petitioners have shown sufficient cause for the delay.

8.The petitioners have stated reasons that their advocate clerk left the advocate's office in 2019 and their case bundle could not be traced out. It is further stated by them that later, after 5 years, they met him, who traced

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out the case bundle in their advocate's office. It is highly unbelievable, as rightly argued by the respondents 2 to 4, that there is no affidavit of the said advocate clerk filed by the petitioners. It is settled position that the litigants are always expected to be vigilant over their rights, liabilities, duties and responsibilities and any litigant, who slept over his right, has to necessary lose his right on account of efflux of time which caused expiry of the cause and that condoning long delay in a routine or mechanical manner by the Courts could not be considered as a good practice. This Court has further held that litigations/appeals are expected to be filed within the period of limitation as contemplated under the Statutes and that condonation of delay is an exception, which are to be exercised discretely, and the Courts are vested with the power of discretion to condone the delay that does not mean that enormous delay in instituting the suit or appeal is to be condoned mechanically.

9. On perusal of the citations relied on by the respondents 2 to 4, recently, the senior brother Judge of this Court clearly reiterate the same position in his order, dated 12.12.2023 in **C.R.P.(MD) No.2789 of 2023** (relied on by respondents 2 to 4 side) following the decision of the **Hon'ble Supreme Court in Sabarmati Gas Limited vs. Shah Alloyes Limited**



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(reported in 2023 Live law (SC) 9) that if the parties failed to prove sufficient cause, the delay may not be condoned. It is the definite case of the respondents 2 to 4 that they have filed the petition in I.A.No.220 of 2020 to pass a final decree, in which the third petitioner appeared through counsel and filed a counter and also he sought adjournment as if the second appeal was pending. To substantiate the same, the respondents 2 to 4 filed the e-Court diary. The petitioners have not chosen to produce material to disprove the same.

10.In this case, the petitioners have filed this petition to condone the delay of 1219 days, i.e., nearly more than 3 years for preferring the second appeal. As rightly submitted by the contesting respondents, as per the affidavit, the petitioners filed a copy application in the year 2019, but filed the second appeal in 2024, so the petitioners, with the intention to drag the final decree proceedings, have filed this delay condonation petition. This argument could not be brushed aside, as there is no substance. The petitioners have not explained each and every days delay of 1219 days. Even a single affidavit of their advocate clerk was not filed to prove their reason. On the other hand, the contesting respondents produced materials about the knowledge of the final decree petition by the petitioners well



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before the filing of this petition and during the said proceedings, the petitioners represented that a second appeal was pending without preferring the second appeal. This shows their unclean hands before the Court. In the above facts and circumstances, the petitioners have no merit in this petition and the same is liable to be dismissed.

11.In the result, this Civil Miscellaneous Petition is dismissed. Consequently, the Second Appeal is rejected at the SR stage itself. No costs.

15.04.2026

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
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