



C.M.P(MD)No.15820 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.01.2026

Pronounced on : 27.02.2026

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.P(MD)No.15820 of 2025

in

A.S(MD)No.210 of 2009

Kannaki,
W/o.Sekar,
Santhanathapuram 1st Street,
T.S.No.5672,
Pudukottai Town and Taluk,
Pudukottai District.

... Petitioner/Appellant

Vs.

1.Saroja,
D/o. Narayanasamy,
Plot No.140, A.M.A. Nagar,
Nizam Colony,
Pudukottai Town and Taluk,
Pudukottai District.

2. Puvanambika,
D/o.Saroja,
Plot No.140, A.M.A.Nagar,
Nizam Colony,
Pudukottai Town and Taluk,
Pudukottai District.



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3.The Commissioner,
Pudukottai Municipality,

At present upgraded as Pudukottai Corporation,
Pudukottai.

... Respondents/Respondents

*(R3 exonerated vide Court order, dated 08.12.2025
made in CMP(MD)No.15820 of 2025 in A.S.(MD)No.
210 of 2009)*

PRAYER: Civil Miscellaneous Petition is filed under Section 5 of the Limitation Act, to condone the delay of 2734 days in filing the application to restore the appeal in A.S(MD)No.210 of 2009, which was dismissed for default on 23.02.2018.

For Petitioner : Mr.C.Godwin
for Mr.P.Santhana Krishnan

For R1 & R2 : Mr.A.Arul Jenifer

R3 : Exonerated vide Order,
dated 08.12.2025

ORDER

This Civil Miscellaneous Petition is filed to condone the delay of 2734 days in filing the application to restore the appeal in A.S(MD)No.210 of 2009, which was dismissed for default on 23.02.2018.



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WEB COPY 2. The petitioner has stated reasons in the accompanying affidavit filed along with the Civil Miscellaneous Petition are follows:

The petitioner has filed the suit in O.S.No.158 of 2004 before the Principal District Court, Pudukottai, against the respondents 1 and 2 to establish the title and for recovery of possession on the basis of observation in order dated 29.10.2003 made in RCOP.No.27 of 2002 on the file of the Rent Controller/Principal District Munsif, Pudukottai. Unfortunately, the suit was dismissed on 12.12.2008, and hence, the petitioner has filed the appeal in A.S(MD)No.210 of 2009 before this Court. The appeal was dismissed for default on 23.02.2018. The petitioner came to know the dismissal of the appeal for default on 14.02.2023 when she received notice in W.P(MD)No.2595 of 2023 on the file of this Court filed by the first respondent. She enquired her counsel, who told her that he had contacted the petitioner over the phone to get details and the same was not reached, and hence he did not appear. Thereafter, the appeal records were mingled with some other records in her advocate's office and the same was traced out on 16.09.2025. So, there is a delay of 2734 days in filing the application for restoration of appeal. There is a title dispute between the petitioner and the respondents 1 and 2. The petitioner has a fair chance of success in the appeal



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and the petitioner is ready to proceed with the appeal. Therefore, she may be given an opportunity of hearing in the appeal.

3. The first respondent filed a counter and objected the petition and stated as follows:

The first respondent has filed the Writ Petition in W.P(MD)No.2595 of 2023 before this Court against the third respondent and the petitioner. The petitioner was duly served notice of the same, so the petitioner has very well knowledge about the dismissal of her suit. The Writ Court passed the order on 05.06.2024. The petitioner has not taken sincere steps to restore the appeal. Only with a view to drag the matter, the petitioner wantonly filed this petition. Hence, the petition has no valid reason and the same is liable to be dismissed.

4. The third respondent has been exonerated from the appeal as he was added as a formal party.

5. Heard both side and perused the records in this petition.



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6. The learned counsel for the petitioner has submitted that the petitioner has a fair chance in the appeal, as there is pure title dispute between the petitioner and the respondents 1 and 2. The petitioner is the lawful owner of the suit property. Due to communication gap between the petitioner and her counsel, the appeal was dismissed for non-prosecution. Thereafter, the case records were mingled with some other records, hence, there is a delay in filing the restoration application. Therefore, the petitioner may be given a chance in contesting appeal.

7. On perusal of the counter affidavit and argument of the respondents' side, it is mainly objected that the petitioner has well knowledge about the dismissal of the appeal. There is no objection on the respondents' side that there is a title dispute between the petitioner and the respondents, even though the suit was dismissed on merits on 12.12.2008. The fact remains that the appeal was preferred within the time limit in the year 2009 and the same was taken on file, but it was dismissed for non prosecution on 23.02.2018.

8. It is a settled principle that every litigant has the right to prefer the appeal and the appeal has to be disposed of on merits. Admittedly, there is huge delay in filing the petition for restoration. Mere delay would not affect



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the right of a litigant and the right of appeal to a party should not be affected.

The rival contentions of both parties regarding the subject matter of the suit and appeal are not necessary to be discussed in this delay condone petition. Therefore, this Court is of the opinion that the petitioner has to be given an opportunity to put forth her case in the appeal and at the same time, the inconvenience caused to the respondents has to be compensated. Considering the above facts and circumstances, the delay is to be condoned by imposing certain conditions to meet out the inconvenience caused to the respondents 1 and 2.

9. In the result, this Civil Miscellaneous Petition is allowed on condition that the petitioner shall pay a cost of **Rs.10,000/- (Rupees Ten Thousand only)** to the respondents 1 and 2 on or before **16.03.2026**, failing which the petition shall stand automatically dismissed without any further reference to this Court.

27.02.2026

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD



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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
C.M.P(MD)No.15820 of 2025
in
A.S(MD)No.210 of 2009

27.02.2026