



C.M.P(MD)No.16999 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 18.03.2026

CORAM

**THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR. JUSTICE P.B.BALAJI**

C.M.P(MD)No.16999 of 2025

in

A.S(MD)SR No.76627 of 2025

S.Nilavazhagan

... Petitioner /
Appellant

Vs

1.S.Gurusamy
2.S.Savithri

... Respondents /
Respondents

PRAYER :-

Civil Miscellaneous Petition is filed under Section 5 of the Limitation Act to condone the delay of 793 days in filing the Appeal Suit in A.S.S.R(MD)No.76627 of 2025.

For Petitioner : Mr.K.Sathiya Singh

For Respondents : Mr.N.Gurusamy
for Mr.J.Barathan for R.2



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No Appearance for R.1

ORDER

(Order of the Court was made by G.R.Swaminathan J.)

Heard both sides.

2.The petitioner herein was the plaintiff in O.S.No.22 of 2020 on the file of the learned Principal District Judge, Ramanathapuram. It was a suit for partition. The suit was dismissed vide judgment and decree dated 31.03.2023. Aggrieved by the same, this first appeal has been filed. The appeal was not filed in time. It has been filed after a delay of 793 days. To condone the same, C.M.P(MD)No.16999 of 2025 has been filed.

3.We went through the contents of the affidavit filed in support of the condone delay petition. Paragraph 10 of the affidavit reads as follows:

“10) I submit that since the Petitioner / Appellant is approached the Lower court counsel later on intimated that the Judgment and Degree in O.S.No.22 of



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2020 on the file of the Principal District Judge, Madurai dated 31.03.2023. My residence is a remote village. Immediately my knowledge I applied the copy of the judgment and decree on 29.10.2024. Subsequent they preferred this Appeal Suit before this Honourable Court. In the mean time our Lower Court bundles was receiving it. But some documents was missing some other bundles. I am financially weak and ready to collect the filing Expenses of the Counsel in the mean time I am also suffering illness. Again I preferred to arrange the amount and to file this Appeal Suit and hence a delay of days occurred. The delay is not willful. It is due to reasons stated above which is beyond our control. Unless the delay of 793 days is condoned, the appellant will be put to irreparable loss and hardship.”

4. Admittedly, the plaintiff had been prosecuting the suit right from the inception. It is not as if this was the first litigation between the parties. O.S.No.22 of 2020 is the third suit between them. When the judgment was pronounced on 31.03.2023, we fail to understand as to why the copy application was made only on 29.10.2024. No explanation has been given for not filing the copy application in time. Be that as it may, when the copy was delivered on 13.11.2024, there was no reason for belatedly filing this appeal only on 09.09.2025. The case on hand



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pertains to partition. Therefore, there is no question of paying ad valorem court fee. The reasons set out in the affidavit filed in support of the condone delay petition are clearly insufficient. Sufficient cause has not been made out.

5.It is seen that the property in question belonged to the mother of the plaintiff. The first defendant is his brother while the second defendant is his sister. There is one other sibling, namely, Murugan, but he has not been made as a party to the suit proceedings. In fact, this was one of the grounds for dismissing the suit.

6.The case of the second defendant is that her mother, Parvathammal settled the suit property in her favor vide settlement deed dated 24.11.1997. It was marked as Ex.B5. The revenue record in respect of the suit property was mutated in favour of the second defendant in the year 2008 itself. Copy of the patta was marked as Ex.B6. The second defendant had earlier filed O.S.No.105 of 2016 seeking permanent injunction against the plaintiff herein. The said suit was decreed on 24.09.2020. The said judgment and decree passed against the plaintiff



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and in favour of the second defendant had attained finality. The settlement deed executed in favour of the second defendant was held to be true and genuine by the Court below as it had been proved in the earlier suit proceedings between the parties.

7.The case of the plaintiff was that the second defendant had executed Ex.A1 release deed in his favor. The second defendant's contention was that while it is a fact that she had executed release deed, it did not cover the suit schedule property. In fact, Murugan, the other brother, had earlier filed O.S.No.120 of 2008 on the file of the District Munsif Court, Madurai seeking the relief of partition. In the said suit proceedings, the present plaintiff was also a party. He did not project Ex.A1 release deed in the said previous suit proceedings. Taking into account all these aspects, the Court below dismissed the suit. We are of the view that the plaintiff has virtually zero case on merits in the first appeal. It is this consideration which impels us to dismiss this petition. As already mentioned, condonation of delay is not a matter of right. Unless sufficient cause is made out, delay cannot be condoned. The affidavit filed by the petitioner is utterly unsatisfactory. However, to



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satisfy our conscience, we wanted to see if the petitioner has an arguable case on merits in the appeal. Since we are satisfied that the partition suit itself is a frivolous one, we unhesitatingly dismiss this petition filed for condoning an inordinate delay of 793 days.

8.This Civil Miscellaneous Petition stands dismissed.

[G.R.S., J.] [P.B.B, J.]
18.03.2026

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
MGA

To

The Principal District Judge,
Ramanathapuram.

G.R.SWAMINATHAN, J.

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AND

P.B.BALAJI, J.

MGA

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