

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
COIMBATORE**

Present: **Tmt. G. VIJAYA, B.A., M.L., PGDCFS**
Principal District Judge, Coimbatore.

Wednesday, this the 25th day of June 2025

I.A.No.2/2023 in O.S.No.632/2021

D. Selvaraj ... Petitioner/Plaintiff

/vs/

1. Ponnusamy @ Deivasigamani (Died)
2. Sivanandham
3. G.V.Ramasamy
4. N. Velusamy(died)
5. P. Moorthi
6. M.Kasumani ...Respondents/Defendants
7. V. Palaniammal
8. K.Malathi
9. R.Mohana
- 10.S.Selvanayaki
- 11.V.Santhosh Kumar ...Proposed Respondents/
Defendants

This petition came before me for final hearing on 05-06-2025 in the presence of **Thiru.A.Kuppuraj**, Advocate for the Petitioner/Plaintiff and **Thiru.R.Ramalingam**, Advocate for the Respondent No.2 and **Thiru.S.Dorairaj**, Advocate for the Respondents 5 and 6/Defendants 5 and 6

and the Respondents 3, 7 to 11 called absent and set ex parte and the Respondents 1 and 4 reported to be dead and upon perusing the records and hearing arguments of both side and having stood over for consideration till this day, this Court passed the following

ORDER

This petition has been filed by the Petitioner under Order 9 Rule 9 of CPC seeking to restore the suit which was dismissed for default on 14-12-2022.

2. Averments contained in the petition :

i. The Petitioner herein is the Plaintiff in this case. The Petitioner filed the above mentioned suit for partition and declaration against the Defendants for the scheduled mentioned property. The property is the ancestral property of the Petitioner's grandfather and after his death, the Petitioner's father (1st Defendant herein) and the Petitioner are the sole legal heirs of the scheduled property. The said suit property was sold along with the share of the Petitioner by the 1st Defendant herein without the consent of the Petitioner to the above mentioned Defendants.

ii. In the above mentioned suit, 2nd Defendant is one of the subsequent purchasers of the suit mentioned properties. The whereabouts of the 2nd

Defendant was not available and summon was returned. Therefore, the Court ordered for 2nd summon service and filing of written statement by 14.12.2022. But they were not able to trace out the details of the said defendant in time. Thus, summon was not served.

iii. In the above mentioned Suit, 4th Defendant is also one of the subsequent purchasers of the scheduled mentioned property. From the information provided by the Court Amin dated 20.11.2021, it was recorded by Court that 4th Defendant died and summon was not served. Due to the unavailability of the information regarding legal heirs of the deceased 4th Defendant, it took them time to gather information. Therefore, they were not able to implead the necessary party in time.

iv. On 14.12.2022 on the date of hearing, the Hon'ble Court dismissed the suit for default. The mistake committed was not done willfully by the Petitioner side. The Petitioner would be put to great hardship, if this application is not allowed.

3. The gist of the counter statement filed by the Respondent No.5 and adopted by the Respondent No.6 is as follows :

i. The petition is not sustainable in law and on facts. This Respondent does not

admit various allegation in the affidavit except those that are specifically admitted herein by him.

ii. The suit was posted on 20.11.2021 and on 20.11.2021 the death of D1 and D4 was reported before this Hon'ble Court. This Hon'ble Court subsequently had adjourned the case on 06.01.2022, 16.03.2022, 22.04.2022, 07.07.2022, 03.08.2022, 12.10.2022, 28.11.2022 and adjourned to 14.12.2022. Several of the hearing batta for D2 was not paid and there was no representation by the Plaintiff. Even on 14.12.2022, this Hon'ble Court had passed an order finding that the Plaintiff is not interested in prosecuting the suit and the orders of this Hon'ble Court on 14.12.2022 is as follows;

“No Batta paid for D2. No steps for D1, D4 also taken up. (PO). The plaintiff is showing any interested to prosecuting this suit. Hence this suit is dismissed for default”

The petitioner had not shown any interest inspite of several adjournments by this Hon'ble Court and no explanation is given before this Hon'ble Court for condoning the delay of 702 days. Without even giving any sufficient and bonafide reason, the Petitioner cannot expect this Hon'ble Court to condone the delay. There is no bonafide grounds to condone the delay and the above application is liable to be dismissed in limini.

iii. The entire allegations in the affidavit is false and stoutly denied. The sale

in favour of these Respondents is valid and the suit itself is filed to coerce the Respondents for unlawful enrichment. The Petitioner intends to keep the litigation alive and thereby coerce the Respondents and they have purposely abandoned the suit and permitted for dismissal. Now the applications are filed for coercive purposes. There is no reason or ground put forth by the Petitioner to condone the delay. There is no reasoning for filing the application to restore the suit belatedly. A vague petition without any details has to be dismissed and rejected. The reason for condone the delay stated in the application is as follows;

“I humbly submit that due to the unavailability of the information, it took me time to trace the details of the legal heirs of the deceased 4th Defendant. Therefore, there is delay of 702 days in filing the necessary application to bring in the legal heirs of the 4th Defendant”

With such statement, how the petitioner is seeking a relief to condone the delay is not known. Under Law, each and every day delay has to be explained to the satisfaction of the Court. A vague application is filed to condone the delay without any justification. There is no explanation is given for the delay in filing an application. Each and every day delay has not explained at all. The Petitioner is careless and negligent in conducting the case. There is no bonafide reasons averred to file a petition under Section 5 of Limitation Act and the petition is

liable to be dismissed. There are no merits or bonafides in the petition and it is purely an abuse of process of law. Hence it is prayed that this Hon'ble Court may pleased to dismiss the petition with costs and render justice.

4. The learned counsel for the Respondent No.2 endorsed as 'petition may be allowed on terms'. Thought notice served upon the Respondents 7 to 11, they have not chosen to appear before this Court and they were called absent and set exparte on 23-08-2023. Inspite of sufficient opportunities, the Respondent No.3 has not come forward to file his counter statement and he was called absent and set exparte on 20-03-2025.

5. The point for consideration :

Whether the suit is to be restored which was dismissed for default on 14-12-2022 or not? is the point for consideration.

6. No oral evidence adduced and document marked on the side of the Petitioner as well as Respondents.

Point :

7. Heard both sides and perused the relevant records. This petition is filed by

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the Petitioner to restore the suit which was dismissed on 14-12-2022. It is the case of the Petitioner that, the suit property is the ancestral property of the Petitioner and his father namely the 1st Defendant herein and without consent of the Petitioner, the 1st Defendant sold the property to the Defendants herein and 2nd and 4th Defendants are subsequent purchasers and the summon sent to the 2nd Defendant was returned since the whereabouts of the 2nd Defendant was not known, hence the Petitioner was not able to trace out the details of the 2nd Defendant in time and further from the information provided by the Court Amin dated 20-11-2021, it was recorded by the Court that 4th Defendant died and thereafter the Petitioner was not able to implead the necessary party in time and while so on 14-12-2022 this Hon'ble Court dismissed the suit for default. It is neither wanton nor willful. Unless the suit is restored, the Petitioner will be put to irreparable loss.

8. The 5th and 6th Respondents/5th and 6th Defendants filed objection stating that on 20-11-2021, the death of the Defendants 1 and 4 was reported before this Hon'ble Court and the case was posted for taking steps for the Defendants 1 and 4 and after obtaining several hearings, batta for the Defendant No.2 was not paid and there was representation on the side of the Plaintiff and on 14-12-2022,

this Hon'ble Court had passed an order finding that the Plaintiff is not interested in prosecuting the suit and hence this petition deserves to be dismissed.

9. This Court has given its anxious consideration on the rival submissions of both the parties. The Petitioner herein is the Plaintiff and the Respondents 1 to 6 herein are the Defendants in the above suit. The Petitioner herein filed the above suit for the reliefs of partition, declaration and other reliefs against the Respondents herein. However, the suit was dismissed for default on 14-12-2022.

10. The learned counsel for the Respondents 5 and 6 contended that, the Plaintiff has allowed the suit to be dismissed for default and therefore the Plaintiff is not at all interested in proceeding with the suit and he wants only to drag on the proceedings.

11. No doubt, the suit is dismissed for default on 14-12-2022. However, the fact remains that the application to restore the suit which was dismissed for default is filed within a period of 8 days and there is no delay. Considering all these facts and circumstances, and also in order to give chance to the Plaintiff to

contest his case on merits, this Court is of the considered view that the petition is liable to be allowed.

In the result, the petition is allowed. No cost.

Dictated to the Steno-typist and transcribed and typed by her in the computer, corrected and pronounced by me in the open court, this the 25th day of June 2025.

PRINCIPAL DISTRICT JUDGE,
COIMBATORE

Principal District Court,
Coimbatore
I.A.No.2/2023 in
O.S.No.632/2021
Dt : 25-06-2025
Draft/Fair Order