

In the court of the Principal District Judge, Cuddalore District, Cuddalore

**Present: Tmt.G. Subathira Devi, M.L.,
Principal District Judge, Cuddalore.**

Tuesday, the 22nd day of April, 2025

I.A.No.816/2023 in O.S.No.43/2021

1. Gunavathi
2. Thambusamy

... Petitioners/Defendants

/Versus/

1. Ramanathan
2. Dhanalakshmi
3. Kasthuri
4. Ilayarasi
5. Udayakumar

... Respondents/Plaintiffs

This petition came on 05.04.2025 before me for final hearing in the presence of Thiru.R.Rajavelavan, Advocate for the Petitioners and of Thiru.R.Gururaj, Advocate for the Respondents and upon hearing both side arguments and upon perusing the oral evidence and case records and having stood over for consideration till this day, this Court is passed the following:

ORDER

This petition is filed by the Petitioners/Defendants under Sec.5 of Limitation Act for seeking to condone the delay of 320 days in filing the exparte decree dated 15.09.2022 and dispose of the suit according to law.

2. The petition averments are as follows:

The petitioner herein is the 2nd petitioner and 2nd defendant in the suit. The 1st petitioner is his mother who is 1 defendant in suit. The petitioner is swearing

this affidavit on behalf of himself and 1st petitioner. The respondents have filed the above suit against the petitioners for partition and separate possession of their 5/6 share in the suit 'B' Schedule property. An ex parte decree came to be passed on 15-09-2022 as the petitioners could not file written statement. The 1st petitioner is his aged mother and he is the only bread-earner of the family. The petitioner is a private driver of heavy vehicle by profession and he is eking out by such avocation. The petitioner had been to Kerala during 1st week of September 2020 and he was able to return in March 2023. The petitioner was under the mistaken impression that his defense was already filed. Subsequently, the petitioner received summons in I.A.No.363/2023 from this Court. And the petitioner have been appearing in this court in person since 21-06-2023. This Hon'ble Court has directed to the petitioner to engage counsel to represent his case and only after getting in touch with his Advocate on 31-08-2023, the petitioner has come to know that his defense was not filed and in fact the petitioner is not aware of the stage of the Court Proceedings due to his illiteracy. The petitioner was not indifferent or negligent. The petitioner is herewith filing their written statement along with this petition to set aside the ex-parte decree dated 15-09-2022. There was a delay of 320 days in filing the application to set aside the ex-parte decree. The delay is beyond his control and out of his innocence and unworldly. The petitioner was not able to project his defense in time. The petitioner has raised contentious issues in his defense statement and he has got fair chance of success in the suit. Interest of justice requires that the petitioner shall be given an opportunity to defend his case. If the delay is not condoned, the petitioner would be put into serious loss. Hence, the petitioner seeks to condone the delay of 320 days in filing the application to set aside the ex-parte decree dated 15.09.2022 and to dispose of the suit according to law.

3. The counter averments filed by 1st respondent and adopted by other respondents are as follows:

The petition filed by the petitioner under Section 5 of the Limitation Act to condone the delay of 320 days in filing the application to set aside ex parte decree dated 15.9.2022 is not maintainable in law and on facts and is liable to be dismissed with costs. The respondents have filed the above suit for partition and separate possession against the petitioners herein. However, the 1st petitioner's husband and 2nd petitioner's father namely Vadamalai, suppressing the presence of Chinnammal, the legally wedded wife of Karuppan @ Arasan and the respondent herein had filed a suit against Karuppan @ Arasan for partition and separate possession. He had filed the suit as if he is the legitimate son of Karuppan @ Arasan. The suit was filed on the file of the Sub-Court, Cuddalore. The suit was filed as if Chinnammal, the mother of these respondent was the concubine of Karuppan @ Arasan. As against the decree and judgment the defendants namely Karuppan @ Arasan and Ramanathan preferred an appeal A.S.16/2018 on the file of District Court, Cuddalore. Pending appeal Karuppan died. Thereafter Chinnammal and respondents 2 to 5 herein were impleaded as the legal heirs of Karuppan. By judgment and decree dated 20.4.2017 the appeal was allowed. The status of Chinnammal as the second wife of Arasan and the legitimacy of the respondents herein as the issues of Arasan was upheld. However, since the suit was for partition and separate possession, the appeal was remanded to the trial court. Thereafter, respondents 2 to 5 herein filed an application to implead them as legal heirs of deceased Karuppan @ Arasan. The immediate forefather of the petitioners herein being the plaintiff in O.S.220/2008 did not come forward to participate in the proceedings and allowed the suit for partition to be dismissed. As such, the petitioners herein are very much aware that they have no defense in the case and allowed this suit to be decreed ex parte. In the affidavit it has been falsely stated

that due to work he was not in the State from September, 2020 and that he had returned in March 2023. Such averments are made with ulterior motive. The petitioner was very much available in Thayyalgundampattinam village throughout. Kerala is not much far away from the suit property. The petitioners herein were served with summons and had engaged the present advocate. If his version that he had not been in station since September, 2020 till March, 2023 is true, then the vakalat filed on his behalf should be false. Further the petitioner in his affidavit has stated that he had been served with summons to appear on 21.6.2023. This clearly shows that the petitioner was put on notice, even prior to 21.6.2023. If really the petitioners herein had any defence in the suit, they should have filed this application immediately. However, they have come forward with this application only much later, that is on 1.9.2023. All these facts together clearly show that the petitioners' only intention is to drag on the proceedings as long as possible and thereby harass these respondents endlessly. Hence, the petition is to be dismissed with compensatory costs.

4. On the Petitioners side, the 2nd petitioner was examined as PW1. No documentary evidence on the side of the petitioners. No oral or documentary evidence on the side of the respondents.

5. **The point for consideration :**

1. *Whether this petition is to be allowed or not?*

Point- 1 :

6. This petition is filed by the Petitioners/Defendants under Sec.5 of Limitation Act for seeking to condone the delay of 320 days in filing the ex parte decree dated 15.09.2022 and dispose of the suit according to law.

7. The learned counsel for the petitioners submitted that the respondents have filed the above suit against the petitioners for partition and separate possession of their 5/6 share in the suit 'B' Schedule property and in the said suit the exparte decree was passed in favour of the respondents on 15.09.2022 due to non filing of written statement and the 1st petitioner is the aged mother of the 2nd petitioner and the 2nd petitioner is the only breadwinner of his family and the 2nd petitioner is a private driver of heavy vehicle and the petitioner had been to Kerala during 1st week of September 2020 and he was able to return in March 2023 and the 2nd petitioner was under the mistaken impression that his defense was already filed. Subsequently, the 2nd petitioner received summons in I.A.No.363/2023 from this Court and the 2nd petitioner has been appearing in this court in person since 21-06-2023 and this Court has directed to the petitioner to engage counsel to represent his case and only after getting in touch with his Advocate on 31-08-2023, the petitioner has come to know that his defense was not filed and in fact the 2nd petitioner is not aware of the stage of the Court Proceedings due to his illiteracy. The petitioner was not indifferent or negligent. The petitioner is herewith filing their written statement along with this petition to set aside the ex-parte decree dated 15-09-2022. There was a delay of 320 days in filing the application to set aside the ex-parte decree. The delay is beyond his control and out of his innocence and unworldly. The petitioner was not able to project his defense in time. The petitioner has raised contentious issues in his defense statement and he has got fair chance of success in the suit. Interest of justice requires that the petitioner shall be given an opportunity to defend his case. If the delay is not condoned, the petitioner would be put into serious loss. Hence, the petitioner seeks to condone the delay of 320 days in filing the petitioner to set aside the exparte decree dated 15.09.2022 and to dispose of the suit according to law.

8. The learned counsel for the Respondents submitted that the respondents have filed the above suit for partition and separate possession against the petitioners herein. However, the 1st petitioner's husband and 2nd petitioner's father namely Vadamalai, suppressing the presence of Chinnammal, the legally wedded wife of Karuppan @ Arasan and he had filed a suit against Karuppan @ Arasan and the 1st respondent Ramanathan herein before the Sub Court, Cuddalore for partition and separate possession. He had filed the above suit on the ground that he is the legitimate son of Karuppan @ Arasan and the said Chinnammal, the mother of these respondents was the concubine of Karuppan @ Arasan. As against the decree and judgment the defendants namely Karuppan @ Arasan and Ramanathan preferred an appeal A.S.16/2018 on the file of District Court, Cuddalore. While pending the appeal the said Karuppan died and thereafter Chinnammal and respondents 2 to 5 herein were impleaded as the legal heirs of Karuppan. By judgment and decree dated 20.4.2017 the appeal was allowed. The status of Chinnammal as the second wife of Arasan and the legitimacy of the respondents herein as the issues of Arasan was upheld. However, since the suit was for partition and separate possession, the appeal was remanded to the trial court. Thereafter, the respondents 2 to 5 herein filed an application to implead then as legal heirs of deceased Karuppan @ Arasan. The immediate forefather of the petitioners herein being the plaintiffs in O.S.220/2008 did not come forward to participate in the proceedings and allowed the suit for partition to be dismissed. As such, the petitioners herein are very much aware that they have no defense in the case and allowed this suit to be decreed ex parte. In the affidavit it has been falsely stated that due to work he was not in the State from September, 2020 and that he had returned in March 2023. Such averments are made with ulterior motive. The petitioner was very much available in Thayyalgunampatinam village throughout. Kerala is not much far away from the suit property. The petitioners herein were served with summons and had engaged the present advocate. If his version that he

had not been in station since September, 2020 till March,2023 is true, then the vakalat filed on his behalf should be false. Further the petitioner in his affidavit has stated that he had been served with summons to appear on 21.6.2023. This clearly shows that the petitioner was put on notice, even prior to 21.6.2023. If really the petitioners herein had any defence in the suit, they should have filed this application immediately. However, they have come forward with this application only much later, that is on 1.9.2023. All these facts together clearly show that the petitioners' only intention is to drag on the proceedings as long as possible and thereby harass these respondents endlessly. Hence, the petition is to be dismissed with compensatory costs.

9. Heard both sides. Perused the case records.

10. On perusal of the case records and suit notes paper, it reveals that the Respondents/Plaintiffs have filed the above suit as against the for Petitioners/Defendants for partition and separate possession of their 5/6 shares in the suit B schedule property and future accounting by separate proceedings under Order 20 Rule 18 of CPC and cost of the suit and for such other reliefs. In the above suit, the petitioners/defendants appeared through their counsel on 05.03.2021 and the case was posted for filing of written statement on 07.06.2021. On 07.06.2021, the suit was reposted to 07.07.2021 due to Covid-19 lockdown. After the said lockdown was relaxed, the suit was posted for filing of written statement on various dated and also last chance have been given to the petitioners/defendants. Though the last chance have been given to the petitioners/defendants, they did not come forward to file their written statement and also they were called absent and hence, this court exparte order passed as against the petitioners/defendants on 09.03.2022 and the suit was posted for exparte evidence. After perusal of the plaintiffs/respondents side oral and documentary evidences, this court was passed preliminary decree on 15.09.2022

in favour of the plaintiffs/respondents as prayed for with cost. Based on the preliminary decree, the respondents/plaintiffs/petitioners have filed a petition in I.A.No.363/2023 for final decree and the summons were served to the petitioners/defendants/Respondents 1 & 2 and on 21.06.2023, the petitioners appeared before this court as party-in-person and requested time for filing of their counter and the said final decree petition was posted for filing of Vakalath and counter on 21.07.2023, 07.08.2023, 03.07.2023, 01.09.2023. On 01.09.2023 the petitioners appeared through their advocate and the petition was posted for filing of counter on 04.10.2023. At this juncture, the petitioners herein are filed this petition on 01.09.2023 for condoning the delay of 320 days to filing the petition to set aside the exparte decree on 15.09.2022. The reasons stated by the petitioners that the 1st petitioner is aged mother of the 2nd petitioner and the 2nd petitioner is the only breadwinner of his family and he is a private driver of heavy vehicle and he is eking out by such avocation and he had been to kerala during 1st week of September-2020 and he was able to return in March-2023 and he was under the mistaken impression that their advocate was already filed the written statement and he was not indifferent or negligent and he is filing herewith his written statement along with petition to set aside the exparte decree dated 15.09.2022 and they have got fair chance of success in the suit. If the delay is not condoned, he would be put to serious loss. In order to prove the contention of the petitioners, the 2nd petitioner was examined as PW1 and PW1 has deposed in his evidence as in the line averred in the petition. Further, the petitioners filed their written statement along with the petition to set aside the exparte decree dated 15.09.2022. Per contra, the respondents denied the allegations made by the petitioners in their petition and objected that it has been falsely stated that due to work he was not in the State from September-2020 and that he had returned in March-2023 and such averments are made with ulterior motive and the petitioners were very much available in Thayyalganampattinam village throughout and the petitioners' only

intention is to drag on the proceedings as long as possible and thereby harass by these respondents endlessly. Further, PW1 was cross-examined by the respondents in view of the above said contentions. Though the respondents have raised serious objection, considering the both side rival submissions and considering the facts and circumstances and nature of the case and filing of written statement along with the petition to set aside the exparte decree dated 15.09.2022, this court decides that an opportunity is to be given to the Petitioners/Defendants to establish their case. Under these circumstances, this court feels that it is appropriate to allow the petition on payment of cost. Accordingly, this point is answered.

11. In the result, this petition will be allowed on payment of cost of Rs.15,000/- to be paid by the Petitioners to the Respondents on or before 02.06.2025, failing which this petition shall stand dismissed. Call on 03.06.2025.

Dictated to the Steno-typist, directly typed by her in computer, corrected and pronounced by me in the open Court, this the 22nd day of April, 2025.

Principal District Judge,
Cuddalore.

Encl:

Petitioners side Witnesses:

PW1 .. Thambusamy

Petitioners side Exhibits: NIL

Respondents side Witnesses and Exhibits: NIL

Prl.D.J.,
Cuddalore.