

IN THE COURT OF DISTRICT MUNSIF AT MADURANTAKAM

PRESENT: Tmt.R.Mahalakshmi., B.A., B.L.,
District Munsif, Madurantakam
Monday, the 13th day of October, 2025

E.A.No.6/2022

in

E.A.No.90/2013

in

E.P.No.25/2012

in

O.S.No.70/1998

1. John Christopher
2. Stella Mary

... Petitioners/3rd parties

/ Vs /

1. S.A.Razhia Begam (died)
2. Mohammed Ianyathulla
3. Basheerabegam
4. Rizevanaparveen
5. Najeem Parveen
6. S.A.Abdul Shabeer
7. Najeembegum

... Respondents/Plaintiffs

...Respondents/Defendants

This petition is presented before me for final hearing in the presence of Tr.S.Suresh, counsel for Petitioners and Tr.G.S.Suresh Babu, counsel for 2nd respondent and 1st and 3rd respondents having been died and 4 to 7 respondents having been called absent and remained exparte and after hearing the arguments on both sides and upon perusal of records and having stood over for consideration till this day, this court delivered the following,

ORDER

This petition is filed by the petitioners/3rd party under Order IX Rule 9 of Code of Civil Procedure, to restore the E.A.No.90/2013 which was dismissed for default dated 05.09.2022.

2. The averments stated in the petition in brief:-

The petitioner herein is the 3rd party. The petitioner states that he has filed

E.A.No.90/2013 for claim petition obstructing the decree. In the said E.A.No.90/2013 the respondent counsel filed memo stating that the 1st respondent died. Thereafter this petitioner due to old age, he could not able to contact his counsel and take steps for deceased 1st respondent. Hence the EA 90/2013 was dismissed for default on 05.09.2022 for not taking steps. Therefore this petition is filed to restore the above said EA 90/2013 which was dismissed for default on 05.09.2022. Hence this petition.

3. The averments stated in the counter filed by the 2nd Respondent, in brief:

This petition is not maintainable in law and on facts. The Respondent denies the entire allegations in the affidavit petition as false except those that are specifically admitted herein. The Respondent states that the petitioner wantonly not filed steps in time and dragged the case proceedings. The respondent further states that already 24 years lapsed to enjoy the fruits of the decree. Hence this petition is liable to be dismissed with costs.

4. The point for determination is whether this petition is to be allowed or not?

5. No Exhibits marked and no witnesses were examined on both sides.

6. Heard both side arguments and perused the records.

7. On perusal of records, it reveals that originally suit is filed by 1st respondent/plaintiff for the relief of partition in O.S.No.70/1998. In the said suit preliminary decree was passed by this court 07.03.2005. Thereafter the 2nd respondent/defendants preferred an appeal in A.S.No.21/2006 and the same was dismissed on 31.10.2006. Thereafter final decree was passed by this court on 24.02.2010.

8. Based on the final decree 1st respondent herein filed the present execution petition for delivery of the suit schedule properties. In the said E.P.No.25/2012 the present petitioner filed E.A.No.90/2013 claim petition obstructing the decree. The petitioner further states that during the pendency of E.A.No.90/2013, the 1st respondent/ plaintiff died and the said petition is posted for steps to deceased 1st respondent. As the petitioner was old aged person, he could not able to contact his counsel and take steps for deceased 1st respondent/plaintiff. Hence the said E.A.No.90/2013 is dismissed for default on 05.09.2022.

9. It reveals that the petitioner has granted sufficient opportunities for taking steps to deceased 1st respondent and finally on 05.09.2022 as there was no representation on the side

of petitioner, the said E.A.No.90/2013 is dismissed for default by this court. Further it reveals that the petitioner has filed this petition on 14.10.2022 and not stated sufficient reason for filing the petition beyond limitation period. At this juncture, this court considers that the application to set aside the order dismissed for default has to be filed by the petitioner within 30 days from the date of order as per Order XXI Rule 106 of Code of Civil Procedure, 1908. Further the petitioner has not stated sufficient reason for his non appearance and not satisfactorily explained the reason for delay in not filing the present petition within the limitation time.

10. Further this court emphasize the directions laid down in *Periyammal (dead through LRs) Vs. V.Rajamani and another etc., [(2025) SCC online SC 507]*, wherein it has been held that execution petitions must be disposed of within six months. Therefore in consonance of the said judgment and considering that the present execution petition is filed in the year 2012, and further final decree was passed by this court in O.S.No.70/1998 on 24.02.2010. It is seen that already 24 years has been lapsed by the respondent to enjoy the fruit of decree, therefore this court holds that belated and untenable objections cannot be permitted to defeat or delay the rights of decree holder. Hence this petition is filed to drag on the proceedings and liable to be dismissed.

11. In the result, this petition dismissed. No costs.

Dictated to the Stenographer, typed by her and corrected and pronounced by me in open court on this the 13th day of October, 2025.

Sd/-R.Mahalakshmi
District Munsif
Madurantakam

List of witness and documents on both side :- - NIL -

Sd/-R.Mahalakshmi
District Munsif
Madurantakam