

IN THE COURT OF THE DISTRICT MUNSIF COURT, PALANI**Present: Selvi. S. Apoorva, BA., LLB.,****District Munsif, Palani.****Dated this 29th day of July 2025, Tuesday****I.A.No.3/2024****in****O.S.No.10/2023**

K. Rajagopal

--- Petitioner/Plaintiff

/Vs/

A. Murugathal

--- Respondent/Defendant

This petition came up for hearing before me on 25.07.2025 in the presence of **Thiru.D.Nandhagopalakarthiskeyan**, the learned counsel for the Petitioner/Plaintiff **Thiru.K.Boopathi**, the learned counsel for the Respondent/Defendant and upon hearing both the sides and perusing the records and having stood over till this day for consideration, this court delivers the following :

ORDER

This petition has been filed by the Petitioner/Plaintiff under Section 148 and 151 of CPC to condone the delay of 138 days for filing objection to the commissioner report.

2. Averments in the Affidavit

2.1. The petitioner submits that he is the plaintiff in the main suit. The main suit has been filed for the relief of permanent injunction. The plaintiff is the absolute owner of the suit property along with other properties by virtue of a registered sale deed dated 23.04.2015 registered as document No.708 of 2015 on the file of Sub – registrar's office. Keeranur. He is in exclusive possession and enjoyment of the suit property as its

absolute owner without any let or hindrance. The suit property was subdivided as S.F.No.204/3D, and the revenue records like chitta also stands in the name of plaintiff. The petitioner/plaintiff filed an application for appointment of advocate commissioner with the help of the surveyor and the same was allowed by this hon'ble court. As per the order of this hon'ble court, the advocate commissioner has visited the suit property and filed his report along with surveyor report on 12.01.2024. He submits that commissioner report has some misleading statements as stated by the advocate commissioner, hence It was ordered to file his objection within one week i.e., on or before 19.01.2024.

2.2. He further submits that due to his ill health he was taking treatment for last three months. And he was unable to meet his advocate to inform the details for objection to the commissioner's report to his objection in time. There is a delay of 138 days in filing his objection for commissioner's report. The delay is neither will full nor wanton one. Hence he came forward with this application to condone the delay in filing his objection for commissioner's report. He submits that unless the delay is condoned he will be put to great loss and much hardship and it will lead multiplicity of proceedings and the respondent will no wat prejudiced if the delay is condoned by this hon'ble Court. Hence this petition.

3.The averments in the Counter Affidavit :

3.1. The respondent submits that this petition is false, frivolous and it is not filed under the correct provision of law. The entire suit property is in the possession of respondent/defendant he built an house and doing agriculture in the suit property. The Petitioner is not in the possession of suit property as stated in the petition. If the petitioner is in the possession of the suit property the advocate commissioner should have mentioned in his report on 12.01.2024 and this court ordered to file an objection to the commissioner report within one week. Subsequently no objection was filed on the

side of petitioner/plaintiff. On 19.01.2024 the respondent filed an objection to the commissioner report and the petition in I.A.No.2/2023 is closed. The petitioner have failed to file an objection even after the court prescribed the specific period.

3.2. After the commissioner report was filed, the plaintiff has no cause of action to file this suit and to cover this the petitioner filed this petition to condone the delay of 138 days to file an objection to the commissioner report in the petition in I.A.No.2/2023 which was closed on 19.01.2024 in order to delay the suit proceedings. The petition has not stated any proper reason to condone the delay. As stated by the petitioner that the delay in filing the objection is due to his illness, he had not filed any documents to prove his illness. As per the provision Section 148 of CPC it is clear that, the court may in its discretion from time to time enlarged such period not exceeding thirty days in total even though the originally fixed have granted may expired. Hence the petition filed to condone the delay for 138 days is not maintainable and this petition is liable to be dismissed.

4. Point for consideration:

whether the petition filed to condone the delay of 138 days for filing objection to the commissioner report is to be allowed or not.

5. Documents :

No oral evidences and documents on both the sides.

6. Discussion, Decision and Reasons thereof:

6.1. The learned counsel for the petitioner argued that the petitioner filed an application in the main suit for appointment of advocate commissioner and the same was allowed by this court. As per the order, the advocate commissioner filed his report along with surveyor report on 12.01.2024. Further it was ordered by this court to file any

objection within one week and due to his ill health he was unable to meet his advocate to inform the details for objection to the commissioner report in time. Hence he filed this petition along with the objection to the commissioner report to condone the delay of 138 days in filing his objection for commissioner report.

6.2. The learned counsel for the respondent argued that this court ordered to file an objection to the commissioner report within one week. Subsequently no objection was filed on the side of petitioner/plaintiff. On 19.01.2024, the respondent filed an objection to the commissioner report and the petition in I.A.No.2/2023 is closed. The petitioner have failed to file an objection even after the court prescribed the specific period. Hence this petition is liable to be dismissed.

6.3. Heard both sides and Records perused. This present petition filed by the petitioner to to condone the delay of 138 days in filing his objection for commissioner report in I.A.No.2/2023 which was closed on 19.01.2024. This petition is filed under Section 148 read with Section 151 of CPC. The Hon'ble Madras High Court held in **Gowri Ammal Vs Murugan. Anbu, Sekar and Saroja Ammal (2006)2MLJ729,**

“ that the court cannot be made helpless or powerless where the upper limit fixed under Section 148 cannot take away the power of the Court under section 151 to pass orders, as may be necessary, for the ends of justice or to prevent abuse of process of Court. The rigid operation, as contained in Section 148, without considering Section 151, as laid down by the Supreme Court, would lead to absurdity”. The main suit is filed by the petitioner/plaintiff to grant the relief of permanent injunction against the defendant/respondent. In order to decide the real dispute between the parties and in the light of the above decision of Hon'ble High Court and for proper adjudication of the matter before this court and in the interest of justice, this court is inclined to allow this petition. Considering the facts and circumstances of the case and in the view of submissions made on both sides, this court decides that mere receiving objection by the petitioner to the commissioner report by condoning the delay does not cause any prejudice to the respondent.

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

Dictated to the Steno-typist, typed by her, corrected and pronounced by me
in open court, dated 29th day of July, 2025.

(Sd/-S.Apoorva)
District Munsif,
Palani.

Witnesses on the side of the Petitioner/Plaintiff:- Nil

List of documents on the side of Petitioner/Plaintiff: Nil

Witnesses on the side of the Respondents/Defendant: Nil

List of Documents on the side of Respondent/Defendant: Nil

(Sd/-S.Apoorva)
District Munsif,
Palani.