

IN THE COURT OF DISTRICT MUNSIF, METTUR, SALEM DISTRICT

Present: **Thiru. M.Selvam, B.A., B.L.,**

District Munsif, Mettur

Tuesday, this the 16th day of June 2026

I.A.No. 02 of 2024

in

O.S. No. 03 of 2023

(CNR No. TNSA17-000004-2023)

1. Jeeva @ Jeevanandam

2. Mani @ Selvaraj

3. Vanitha @ Sarasu @ Saraswathi

4. Sumathi @ Rasathi

... Petitioners/Defendants

/versus/

1. Rajendran (Died) *

2. Sivagamasundari *

3. Prabhakaran *

... Respondents/Plaintiffs

**** Amended as per order passed in I.A.No. 04 of 2025 dated 15.09.2025***

This petition is heard in the presence of Mr. S. Mohanram., M.A., M.L., the Learned counsel for the Petitioners/Defendants and Mr. S. Kesavan., B.C.A., B.L., the Learned counsel for the Respondent/Plaintiff. Enquiry heard and having stood over for my consideration till this day, this court delivered the following,

ORDER

This petition is filed by the petitioners/defendants under Section 5 of the Limitation Act, 1963 to condone the delay of 25 days in filing the petition to set-aside the exparte decree dated 05.12.2023 passed in the O.S.No. 03 of 2023 on the file of this court.

1.Brief averments in the petition filed by the petitioners is as follows:

1.1. The petitioners are the defendants in the original suit and the same was filed for the relief of permanent injunction by the respondent/plaintiff. The said suit

was posted on 19.07.2023 for filing written statement by the petitioners. The 1st petitioner herein is conducting the case on behalf of the other petitioners. Due to his illness, the 1st petitioner could not able to meet the counsel to give instructions to file the written statement. Then the suit was posted on 28.07.2023 for the appearance of the petitioners and this court ordered exparte and the suit was decreed on 05.12.2023.

1.2. When the 1st petitioner had enquired about his presence before this court, he was informed that he was already called and this court had passed exparte decree. Immediately, he had engaged the counsel and filed this petition to set-aside the exparte decree. But there caused delay of 25 days in filing the petition. Hence, this petition is filed to condone the said delay.

2. Brief facts in the counter statement filed by the 1st respondent/plaintiff and adopted by the other respondents is as follows:

2.1. The respondents had specifically disputed the averments put forth by the petitioners. The petitioners had not submitted the medical certificate and not mentioned the illness, which stopped the 1st petitioner for more than 130 days in appearing before this court. The petitioners had not come to the court with clean hands and suppressed many material facts. The defendants 1 to 4 were brothers and sisters and co-sharers of the adjacent properties. The schedule B property was a common property measuring 4 feet in width and 40 feet in length situated between the properties of the petitioners and the respondent. The schedule A property is the absolute property of the respondent and he is using the schedule B property as a common property. But the petitioners were continuously causing disturbance to the respondent in using the suit pathway. There is no prima facie in this petition. Hence, this petition is liable to be dismissed.

3. No oral and documentary evidence on the either side.

4. Points for Consideration:

(i) Whether the delay of 25 days in filing the petition to set-aside the exparte decree dated 05.12.2023 passed in O.S.No. 03 of 2023 has to be condoned or not ?

5. Both side rival submissions heard with regard to their respective pleadings and perused the materials on record. The original suit is filed by the 1st respondent/plaintiff as against the petitioners/defendants for the relief of permanent injunction restraining them from in anyway causing disturbance to the respondent/plaintiff's possession in the suit pathway.

6. On perusal of the case records, it shows that the petitioners herein had entered appearance in the original suit through a counsel on 06.02.2023 and then remained exparte on 28.07.2023 for their non appearance, even after their counsel had endorsed as no instructions from them and whereas, the case was posted for their appearance. Thereafter, the 1st respondent/plaintiff was examined as PW1 and marked Ex.A1 to Ex.A3 and then judgment and decree was also passed on 05.12.2023.

7. At this juncture, the petitioners herein, who were the defendants in the original suit had come forward with this application to condone the delay of 25 days in filing petition to set-aside the exparte decree. After filing of this petition, since the 1st respondent/plaintiff was died on 04.05.2024, his legal representatives were impleaded as respondents 2 and 3 herein.

8. It is the contention of the petitioners that the 1st petitioner is conducting the case on behalf of the other petitioners and he had felt illness and could not able to give instructions to his counsel for filing the written statement, which let the suit to pass an exparte decree. Admittedly, the petitioners herein had not produced any

materials with regard to the alleged ailment suffered by the 1st petitioner. Further, there was no averments on the side of the petitioners, though the 1st petitioner, who was conducting the case on the behalf of the other petitioners was felt illness, why the other petitioners had not even turned up before this court.

8. In the original suit, the 1st respondent/plaintiff is claiming the relief of permanent injunction in respect of the suit pathway. The petitioners/defendants herein had also filed their written statement along with this petition claiming their independent right and title over the suit pathway. Since, the dispute is of this like nature and whereas, the petitioners/defendants had also filed their written statement, this court forms opinion that one more opportunity can be given to the petitioners to proceed with the case.

9. Further, it is well settled principle that refusing to condone the delay can result in meritorious matter being thrown out at the initial stage and cause the justice being defeated and that the word sufficient cause under section 5 of the Limitation act should adopt a liberal and justice oriented construction to advance the justice. At this instant, this court is of the view that if the main suit was decided on merits on considering both sides evidence if any produced before this court, the same would advance the interest of justice for both parties. However the delay caused to the respondents/plaintiffs has be compensated by the petitioners/defendants in the manner known to law. Hence, in the interest of justice and in order to avoid the multiplicity of proceedings, this court is inclined to allow this petition on payment of cost.

In the result, this petition is allowed on payment of cost of Rs. 2,000/- to the respondents/plaintiffs on or before 01.07.2026, failing which this petition stands dismissed. For compliance call on 02.07.2026.

This order is dictated to the steno-typist, directly typed by him in the computer, corrected and pronounced by me in the open court on this 16th day of June 2026.

**District Munsif,
Mettur.**

Both side witnesses and exhibits: Nil

**District Munsif,
Mettur.**