



CRP No.4052 of 2026

P.B.BALAJI, J.

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This matter is listed today under the caption for “ being mentioned ”, at the instance of the learned counsel for the petitioner.

2. Heard the learned counsel for the petitioner.

3. In view of the inadvertent typographical error at paragraph No.11 of the order dated 02.09.2026 in CRP No.4052 of 2026, the original suit number and the name of the Trial Court shall be read as follows.

***“ O.S.No.253 of 2009, pending on the file of the Principal District
Munsif Court, Pollachi.”***

4. Registry is directed to issue fresh order copy after making necessary corrections.

11.09.2026

MST

Note: Order copy to be uploaded on or before 15.09.2026.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-09-2026

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THE HONOURABLE MR.JUSTICE P.B. BALAJI

CRP No. 4052 of 2026

1. Sukumar

s/o.Nagarajan, Ravanapuram, Udumalpet
Tk., Tiruppur Dist. and another

2. Selvakumar

S/o.Nagarajan, Ravanapuram, Udumalpet
Tk., Tiruppur Dist. Rep. by their Power
Agent, Shanthakumari W/o.Nagarajan,
Ravanapuram, Udumalpet Tk., Tiruppur
Dist.

Petitioner(s)

Vs

1. Visalakshi

W/o.Sivasamy, Kaliappagoundenpudur,
Marchanaickenpalayam, Pollachi.

2.Pankajam

W/o.Periyasamy, Kolarpatti, Pollachi.

3.Balamani

Kolarpatti, Pollachi. Banumathi(died).

4.Boopathy

S/o.Seenithurai Gounder,
Maamarathupatti, Thenkmarapalayam
Post, Pollachi.

5.Jayakumar

S/o.Seenithuraigounder,
Maamarathupatti, Thenkumarapalayam
Post, Pollachi.

6.Senthilkumar

S/o.Seenithurai Gounder,
Maamarathupatti, Thenkmrapalayam
Post, Pollachi.

Respondents



For Petitioner(s): Mr.L.Mouli

For Respondent(s): Mr.N.Umapathi

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ORDER

The revision petition has been filed challenging the order in I.A.No.3 of 2025 allowing the application filed under Section 5 of Limitation Act, condoning a delay of 457 days in filing an application to set aside the exparte decree.

2. The trial Court despite objections by the plaintiffs has proceeded to allow the said application on condition that the respondents/defendants pay a sum of Rs.2,500/-.Admittedly, the said cost has been tendered by G-pay to the junior counsel on record for the plaintiffs before the trial Court. The said amount has not been returned by the plaintiffs' counsel. However, subsequently, before the Court, the counsel has made an endorsement that the cost has been received without prejudice.

3. This Court in *M/s Fast Cool Services by Partners & Ors vs PO.Shanthakumari* reported in (2000) 3 CTC 257 followed in *Dhanraj N.Kochar vs Hemant Raj & 2 Ors – CRP No.867 and 752 of 2025 dated 29.08.2025* has already held that once the trial Court has exercised discretion and awarded costs and the said costs are also received by the respondents, then, whether it is with prejudice or without prejudice, it will be a matter of no concern and the discretion



exercised by the Court and allowing the application will have to be affirmed.

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4. However, in the peculiar facts of the present case, there is also a cross litigation, in which, the respondents have filed two suits – one for permanent injunction and one for declaration of their right in respect of the very same subject property. The said suits in O.S.Nos.475 of 2024 and 117 of 2024 for permanent injunction and declaration were concurrently dismissed by the trial Court as well as the first appellate Court, as against which, a Second Appeal is pending before this Court in S.A.No.484 of 2019.

5. Mr.L.Mouli, learned counsel for the petitioners states that the costs were sent by G-pay on the last day fixed for payment and since it was by way of UPI payment, there was no occasion for the counsel to refuse the tender and it was only at the insistence of the Court that an endorsement was made that the costs was received without prejudice. He would therefore state that there is no impediment for the petitioners to challenge the said order, especially since the petitioners have already taken physical possession of the subject property from the respondents on 19.10.2022 through Court process. Further, he would contend that the application filed under Section 5 of the Limitation Act itself came to be filed on 18.10.2022, long after having entered appearance in E.P.No.3 of 2021. He would therefore state that the petitioners have good grounds to attack the order passed in I.A.No.3 of



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2025 and the receipt of costs and making of the endorsement in the circumstances mentioned herein above, cannot be put against the petitioners. He would also state that since the petitioners' suit for declaration of title and permanent injunction have been dismissed concurrently, unless and until the respondents succeed in S.A.No.484 of 2019, they have no defence in the suit filed by the petitioners herein.

6. Per contra, learned counsel appearing for the respondents state that once the petitioners have received the costs, it is not open to them to challenge the order allowing I.A.No.3 of 2025 and therefore, there is no merit in this revision. He would also invite my attention to the judgment passed in favour of the revision petitioners, which is effectively a non-speaking order without assigning any reasons.

7. I have carefully considered the submissions of the learned counsel on either side.

8. Considering the peculiar facts and circumstances narrated herein above, and also in view of the admitted position that possession having been taken by the petitioners way back on 19.10.2022, unless and until the respondents succeed in S.A.No.484 of 2019, they will not be entitled to contest the suit filed subsequent to the dismissal of their suits in O.S.No.475 of 2004 and O.S.No.117 of 2004.



Therefore, as rightly suggested by Mr.L.Mouli, learned counsel for the petitioners, in the interest of both the parties, it would be desirable that this revision is taken up along with S.A.No.484 of 2019.

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9. The parties are the same. The subject matter in dispute is also the same. The verdict in S.A.No.484 of 2019 will have a direct bearing on the *lis* between the parties in the present revision petition. In the event of the petitioners being successful in getting the Second Appeal dismissed, then they cannot be compelled to go in for a re-trial of their suit. This will also save considerable judicial time.

10. In view of the above, Registry is directed to place the matter before the Hon'ble Chief Justice for directing the revision to be posted along with S.A.No.484 of 2019.

11. It is brought to my notice that in view of the condone delay petition being

P.B.BALAJI.,J

sr



allowed, the trial Court is now taking up the application filed Order IX Rule 13 of Civil Procedure Code. Hence, there shall be an order of interim stay of all further proceedings in O.S.No.253 of 2019, pending on the file of Principal District Court, Pollachi, including enquiry in the application filed under Order IX Rule 13 of Civil Procedure Code.

12. Registry shall place the papers before the Hon'ble Chief Justice for issuing necessary direction to list this revision, for being heard along with S.A.No.484 of 2019.

02.09.2026

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