

IN THE COURT OF THE ADDITIONAL MUNSIFF, CHERTHALA

Present: Sri. Mahesh.M., Additional Munsiff

Tuesday, the 10th day of March, 2026/ 19th Phalgunam, 1947.

IA No.10/2025 in O.S. No. 290/2023

(Filed on 16.12.2025)

Petitioners/Defendants:-

1. Bijilal, aged 57,
S/o Thankachan, Venthambil House,
Vayalar,P.O, Vayalar Kizhakkku Village, Cherthala.
2. Binduja, aged 25,
D/o Bijilal, Venthambil House,
Vayalar.P.O, Vayalar Kizhakkku Village, Cherthala.
3. Bindya, aged 23,
Venthambil House, Vayalar,P.O,
Vayalar Kizhakkku Village, Cherthala.
By Adv.N.D.Premnath & Adv.S. Sreekumar

Respondents/Plaintiffs:-

1. Ammini, W/o Late Dasan,
Venthambil House, Vayalar Kizhakku Village,
presently at Vallyarayil, Mayithara,P.O, Cherthala.
2. Lekha, W/o Late Babu,
Vallyarayil, Mayithara,P.O, Cherthala.
3. Rakhitha, D/o Late Babu,
Vallyarayil, Mayithara,P.O, Cherthala.
4. Revathy, D/o Late Babu,
Vallyarayil, Mayithara,P.O, Cherthala.
*By Adv.T.Jayakrishnan, Adv.S.Lekha, Adv.M.V.Baiju,
Adv.Jintu.T.Babu & Adv. Ananthalakshmi.S*

This Petition having been finally heard on 02.02.2026 and the court on 10.03.2026 passed the following :-

ORDER

This is a petition filed by the petitioners to set aside the ex-parte order passed against them.

2. Petition averments in brief are as follows –

The petitioner is the 1st defendant in the above suit. The 1st plaintiff is the petitioner's mother-in-law and grandmother of the petitioner's daughters. Due to a road accident in the year 2017, the petitioner's mother-in-law was suffering from loss of memory and forgetfulness and was under the treatment of a Psychiatric Doctor at Alappuzha Medical College. She was residing with the petitioner's family up to 2019. The 2nd plaintiff took the petitioner's mother-in-law from the petitioner's residence without the knowledge and consent of the petitioner during the month of October 2019 and brought her back after a period of 10 months. Then she again took the petitioner's mother-in-law during the month of August 2021, and she is now residing with her. The medical records of the 1st plaintiff were forcibly taken away by the 2nd plaintiff. In the absence of medical records, the petitioner could not file the written statement in time. Apart from that, the petitioner was not aware of the meaning and necessity of a "Written Statement" in the above case. The posting dates were noted by the petitioner but could not be intimated to counsel in time, and the petitioner could not understand the necessity of a written statement in the above case. There is no willful laches or negligence on the part of the petitioner in not intimating the said matter to counsel in time. Due to lack of knowledge in law and working as a tempo driver, the petitioner could not understand the legal formalities. On 22.11.2025, in disposing I.A.No. 8/2025 filed under Section 10 of C.P.C., this Court set the defendants exparte due to the non-filing of the written statement and posted the above case for evidence of the plaintiff and adjourned to 28.11.2025. Exparte evidence was recorded, and the right of the defendants to

cross-examine the plaintiff was denied. The defendants have serious contentions and a counterclaim in the above case. The defendants have already filed a suit against the 2nd plaintiff for creating a settlement deed fraudulently and registering it in the Sub Registry office. Challenging the validity of the said document, the defendants herein filed a suit for declaration that the same is invalid. As the 1st plaintiff is suffering loss of memory and is not in a position of sound mind, any document created by her has no legal validity. The 2nd plaintiff and her late sister Sindhu were the co-owners of the property along with their mother Ammini, the 1st plaintiff. Out of the 40 cents obtained through Partition Deed No. 3491 of 1993 to the 1st plaintiff, 2nd plaintiff, and late Sindhu, almost 30 cents of land was grabbed by the 2nd plaintiff fraudulently through the 1st plaintiff. In these situations, the exparte order passed on 22.11.2025 has to be set aside, and the above suit tried along with O.S. 244/2023 jointly and adjudicated. Hence, it is just and necessary in the interest of justice to set aside the exparte order passed against the defendants in the above suit on 22.11.2025 and allow contesting of the above case. Hence this petition.

3. Respondents filed objection contending as follows –

The petition has been presented without any bonafide belief and is legally unsustainable. There exists no illness requiring the production of medical records of the first petitioner. The allegation that the petition was not filed owing to the non-availability of medical records is false and intended solely to mislead this Court. The averment that the petitioner was unaware of the necessity to file a written statement in the present case, despite having already instituted OS 244/23 against the respondents, is a fabricated plea raised only to sustain the petition. Such statements are false and hence denied.

4. Heard both sides.

5. The following points are raised for determination.

- i) Whether the petition is allowable?
- ii) What is the order?

6. Point No.1 –

The short question that arises for consideration in this petition is whether the petitioners have shown sufficient cause for their failure to file the written statement within the statutory period prescribed. Under Order IX Rule 7 of the Code of Civil Procedure, it is incumbent upon the defendant to assign a good cause for setting aside the *ex parte* order passed against him. While examining this aspect, it is noted that the petitioners have put forth two reasons for their non-filing of the written statement within time. The first reason advanced is that the medical records of the first plaintiff were allegedly taken away from their custody by the second plaintiff. On a careful perusal of the case records, it is evident that the suit has been instituted seeking permanent prohibitory and mandatory injunctions. The averments in the plaint do not necessitate the production of the medical records of the first plaintiff before this Court along with the written statement. Furthermore, the petitioners have failed to explain why such medical records were essential for filing their written statement. In the absence of any cogent explanation, this Court is of the considered view that the first cause projected by the petitioners cannot be accepted as genuine. It appears to be an afterthought and does not constitute a valid justification for the delay in filing the written statement.

7. The second cause projected by the petitioners is indeed surprising. According to them, they were not aware of the necessity of filing a written statement. This contention cannot be accepted. It is pertinent to note that the petitioners are not appearing before this Court as parties in person. They are represented by a competent counsel, who is presumed to possess sufficient legal

acumen and knowledge of procedural requirements. Even if the petitioners themselves were unaware of the obligation to file a written statement, it is difficult to assume that their counsel was also ignorant of such a fundamental requirement under CPC. The petitioners have not pleaded, nor is there any material to suggest, that their counsel failed to advise them regarding the necessity of filing a written statement. In the absence of such a plea, the explanation offered by the petitioners cannot be accepted. This Court is therefore constrained to hold that the non-filing of the written statement by the petitioners was not due to any bonafide mistake or unavoidable circumstance, but can only be seen as deliberate. Accordingly, the second cause assigned by the petitioners does not constitute a 'good cause' within the meaning of Order IX Rule 7 CPC. Hence this point is found against the petitioners.

7. Point No.2 -

In the result the I.A. is dismissed.

(Dictated to the Confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court this the 10th day of March, 2026.)

Sd/-
MAHESH M.
ADDITIONAL MUNSIFF

APPENDIX :- NIL

Sd/-
ADDITIONAL MUNSIFF