

**IN THE COURT OF THE DISTRICT MUNSIF, SULUR.**

Present : **Tmt.N.Renuga**, B.A., B.L.,

District Munsif, Sulur

Monday, the 10<sup>th</sup> day of February 2025

**I.A.No.5/2024**

**in**

**O.S.No.225/2021**

Banupriya

... Petitioner / 2<sup>nd</sup> Defendant

/ Vs /

1. Prabakaran

... 1<sup>st</sup> Respondent/ Plaintiff

2. Deivasigamani

3. Thulasiyammal

4. Deivathal

5. Ramathal

6. Kalichamy

... 2<sup>nd</sup> to 6<sup>th</sup> Respondents/ 1<sup>st</sup>, 3<sup>rd</sup> to 6<sup>th</sup> Defendants

This petition is coming on 04.02.2025 this day for final hearing before me in the presence of Mr.S.Prakash, Advocate for the Petitioner and Mr.M.Jayanthinathan, Advocate for 1<sup>st</sup> Respondent and Mr.S.Somasundaram, Advocate for 4<sup>th</sup> Respondent and Mr.M.Sivakumar, Advocate for 6<sup>th</sup> Respondent and the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents are being called absent set exparte in main suit and upon perusing the records and having stood over for consideration till this day this Court delivered the following :

**ORDER**

Petition filed under Order 9 Rule 7 and section 151 of CPC to set aside the exparte order passed against the petitioner/ 2<sup>nd</sup> defendant on 23.03.2023.

**1. The brief averments of the affidavit filed by the Petitioner as follows:-**

1.1. The plaintiff herein have filed the main suit for seeking permanent injunction against this petitioner/ 2<sup>nd</sup> defendant. The main case was posted for her written statement on 23.03.2023. On that day the petitioner/ 2<sup>nd</sup> defendant was felt ill hence, she could not contact her counsel in right time. Because of non filing of 2<sup>nd</sup> defendant's written statement on 23.03.2023 she was set exparte by this court. ‘

1.2. The petitioner/ 2<sup>nd</sup> defendant came to know about the exparte order was passed against her, hence she come forward to file this set aside petition to set aside the exparte order passed against her. Hence, the petition.

**2. The brief averments of counter filed by the 1<sup>st</sup> respondent as follows:-**

2.1. The petition is false, frivolous, vexatious and unsustainable in law and upon the facts of the case. The petitioner/ 2<sup>nd</sup> defendant purposely filed this petition after a year from exparte order was passed against her. Moreover, this order 9 rule 7 petition was filed by the petitioner as the second time in this same suit. Earlier she was set exparte for not filing of vakalath.

2.2. This petitioner concern the property was partition between her and the respondent/ plaintiff herein. Hence, she doesn't have any objection over the relief of the main suit sought for. This petitioner/ 2<sup>nd</sup> defendant was derived as a formal party to the suit. There is no justifiable reason given by the petitioner to allow the petition. Hence, the petition ought to be dismissed.

**3. Point for Consideration:-**

Whether the petition under Order 9 Rule 7 and section 151 of CPC to set aside the exparte order is to be allowed?

**4. Point:-**

4.1. Heard learned counsel for both parties records perused. The main suit is filed by the 1<sup>st</sup> respondent/plaintiff for the relief of permanent injunction. The 2<sup>nd</sup> defendant has not filed her written statement and she was set exparte on 23.03.2023.

4.2. Subsequently on 19.11.2024 the petitioner / 2<sup>nd</sup> defendant filed this petition to set aside the exparte order passed against her on 23.03.2023 along with written statement. Hence, this court thinks an opportunity to be given to the petitioner/ 2<sup>nd</sup> defendant to participate in trial and to get a binding judgment on merits.

***In the result this petition is to be allowed on payment of cost of Rs.1000/- to be paid to the 1<sup>st</sup> respondent/plaintiff on or before 24.02.2025 on failure this petition stands dismissed automatically. For compliance Call on 24.02.2025.***

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 10<sup>th</sup> day of February 2025.

Sd/N.Renuga

District Munsif,

Sulur.

**List of witnesses and documents on petitioner side:-**

Nil

**List of witnesses and documents on Respondents side:-**

Nil

Sd/N.Renuga

District Munsif,

Sulur.

25.02.2025

This petition is again coming on this day for final hearing before me in the presence of Mr.S.Prakash, Advocate for the Petitioner and Mr.M.Jayanthinathan, Advocate for 1<sup>st</sup> Respondent and Mr.S.Somasundaram, Advocate for 4<sup>th</sup> Respondent and Mr.M.Sivakumar, Advocate for 6<sup>th</sup> Respondent and the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup>

Respondents are being called absent set exparte in main suit and upon perusing the records and having stood over for consideration till this day this Court delivered the following :

ORDER

Cost of Rs.1000/- paid memo recorded. This petition is allowed.

Pronounced by me in open court this the 25<sup>th</sup> day of February 2025.

Sd/N.Renuga

District Munsif,

Sulur.

Draft/ Fair Order

I.A.No.5/2024 in

O.S.No.225/2021

Dated : 25.02.2025

DMC, Sulur.