

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

Present : **Tmt.N.Renuga**, B.A., B.L.,
District Munsif, Sulur

Saturday, the 2nd day of March 2024

I.A.No.8/2024
in
O.S.No.529/2017

1. Kalamani

2. Sangeetha

... Petitioners / 16th and 17th Defendants

/ Vs /

1. R.Palanisamy (died)

2. P.Vijayalakshmi

3. P.Thangaraj

4. P.Vivek

...Respondents/plaintiffs

This petition is coming on 21.02.2024 for final hearing before me in the presence of Thiru.P.P.Suresh Kumar, Advocate for the Petitioners and of Thiru.S.Jagadheesan, Advocate for the Respondents 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 against the petitioners dated 15.09.2022.

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

1.1. The 1st petitioner is the mother of the 2nd petitioner. The respondents have filed the suit for declaration and permanent injunction and other reliefs.

1.2. The previous counsel instructed the petitioners that he will inform about the further hearing. But the counsel did not inform petitioners the stage of above case and did not inform petitioners after receiving the documents for filing written statement from petitioner. The 2nd petitioner father died intestate on 18.03.2015 and

her father alone was following the case proceedings earlier. When the 2nd petitioner enquired recently, she found out that they were set exparte for non filing of written statement on 15.09.2022. The petitioners did not have any paper of the case to prepare written statement. Now the petitioners have file copy application for necessary documents for filing written statement. The petitioners have a very good case and kindly give petitioner an opportunity to present petitioners case. For non filing of written statement the petitioners were called absent and this Hon'ble court to passed exparte order against the petitioners. The said mistake is neither willful not wanton one. The petitioners have very good defense and they have to permit to proceed the case on merits. Hence, the petition.

2. The brief averment of counter statement filed by the 4th respondent and adopted by the 2nd and 3rd respondents as follows :-

2.1. The petition is false, frivolous, vexatious and unsustainable in law and upon the facts of the case. The above application has been filed in order to drag on the proceedings, and there is no merit in the application, and the present application is filed without filing written statement and same is not maintainable and liable to be dismissed.

2.2. Already several opportunities were given to the petitioners to file their written statement and merely blaming their earlier counsel in non filing of written statement is not ground to allow the present application. Hence, the 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. The main suit is for declaration and permanent injunction. On perusal of records the 16th and 17th defendants not filed their written statement and called absent set exparte on 15.09.2022 and this case was posted for trial. After several stage, after amendment this case is posted for

additional written statement and on 08.02.2024 no additional written statement on the same day the 16th and 17th defendants filed this petition under order 9 rule 7 of CPC to set aside the exparte order against them.

4.2. The respondents side has not stated any serious objections. The 2nd petitioner father died intestate on 18.03.2015 and her father alone was following the case proceedings earlier. The petitioners did not have any paper of the case to prepare written statement and now the petitioners have file copy application for necessary documents for filing written statement. This main suit being the year of 2015, the relief of declaration and permanent injunction is to be get after the full pledged trial on merits. The delay should be definitely cause hardship to the respondents/ plaintiffs. Hence, the delay to be compensated by way of cost.

In the result, this petition is to be allowed on payment of cost of Rs.1000/- paid to the respondents/plaintiffs on or before 12.03.2024. On failure this petition stands dismissed automatically. For compliance Call on 12.03.2024.

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 2nd day of March 2024.

Sd/N.Renuga
District Munsif,
Sulur.

List of witnesses and documents on petitioners side:-

Nil

List of witnesses and documents on Respondents side:-

Nil

Sd/N.Renuga
District Munsif,
Sulur.

12.03.2024

This petition is again coming on this day for final hearing before me in the presence of Thiru.P.P.Suresh Kumar, Advocate for the Petitioners and of Thiru.S.Jagadheesan, Advocate for the Respondents and upon perusing the records and having stood over for consideration till this day this Court delivered the following :

ORDER

Cost paid memo recorded. This petition is allowed.

Pronounced by me in open court this the 12th day of March 2024.

Sd/N.Renuga
District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.8/2024 in
O.S.No.529/2017
Dated : 12.03.2024
DMC, Sulur.