

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

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

District Munsif, Sulur

Tuesday, the 15th day of October 2024

I.A.No.5/2024

in

O.S.No.383/2017

1. Smt.Padmavathi

2. Smt.Sathiyapriya

3. Mr.Senthilkumar

... Petitioners / 2nd to 4th defendants

/ Vs /

Mr.S.Senthilkumar

...Respondent/plaintiff

This petition is coming on 04.10.2024 for final hearing before me in the presence of Mr.D.Sampath, Advocate for the Petitioners and of Mrs.R.Srichitradevi, Advocate for the Respondent and upon perusing the records and having stood over for consideration till this day this Court delivered the following :

ORDER

Petition filed by the petitioners under Order 9 Rule 7 of CPC to set aside the exparte order.

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

1.1. The respondent/plaintiff herein filed the suit for partition against the petitioners/defendants. The petitioners/ 2nd to 4th defendants entered into the case and appeared through their counsel in I.A.No.1/2022 and subsequently all the applications was allowed and the case was posted on 25.04.2024 for filing of petitioners/ 2nd to 4th defendants written statement, the petitioners/ 2nd to 4th defendants have applied for certain vital documents to prepare a written statement. Now recently only the petitioners/ 2nd to 4th defendants obtained those vital documents from the concerned

department. In the meantime the petitioners/ 2nd to 4th defendants were set exparte for non filing of written statement and the suit has been posted for trial.

1.2. The non filing of written statement is neither willful nor wanton. The petitioners/ 2nd to 4th defendants having a valid defence in this suit. The petitioners/ 2nd to 4th defendants are filing the written statement along with this petition. Hence, the petition.

2. The brief averment of counter statement filed by the respondent as follows :-

2.1. The petition is false, frivolous, vexatious and unsustainable in law and upon the facts of the case. The suit is in the stage of cross examination in the meantime the above application has been filed in order to drag on the proceedings, and there is no merit in the application. Hence, the ought to be dismissed.

3. Point for Consideration:-

Whether the petition under Order 9 Rule 7 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 partition. On perusal of records the main suit filed before District Minsife Court, Palladam in OS.No.370/2007. The 1st to 4th defendants are called absent set exparte on 28.03.2008 and the said case was posted for written statement of 5th to 9th defendants. On 15.11.2008 the 5th and 9th defendants filed their written statement and on 07.08.2009 the 6th to 8th defendants not filed their written statement called absent set exparte. On 23.02.2010 issues framed this case posted for trial. During formation of Tiruppur Judicial District this case falls under the territorial jurisdiction of District Munsif Court, Coimbatore and renumbered as OS.No.888/2013 and transferred District Munsif Court, Sulur and renumbered as O.S.No.383/2017 and posted for trial on 26.07.2017 and on 11.09.2017 no representation for plaintiff this case is dismiss for default.

4.2. On 19.09.2023 the suit is restored in IA.No.1/2022 and steps for 1st and 7th defendants filed and allowed and suit is amended and the legal heirs were are

impleaded and trial has been commenced. On 11.09.2024 this case was posted for cross of plaintiff side witness on the same the day the 2nd to 4th defendants filed this petition along with written statement to set aside the ex parte order passed against them.

4.3. The respondent/plaintiff side has not stated any serious objections. The main suit in the year of 2007 and for the relief is partition. In the interest of justice the petitioners/ 2nd to 4th defendants also given opportunity to contest the case on merits. 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.3000/- paid to the respondent/plaintiff on or before 25.10.2024. On failure this petition stands dismissed automatically. For compliance Call on 25.10.2024.

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 15th day of October 2024.

Sd/N.Renuga

District Munsif,
Sulur.

List of witnesses and documents on petitioners side:-

Nil

List of witnesses and documents on Respondent side:-

Nil

Sd/N.Renuga

District Munsif,
Sulur.

25.10.2024

This petition is coming again on this day for final hearing before me in the presence of Mr.D.Sampath, Advocate for the Petitioners and of Mrs.R.Srichitradevi, Advocate for the Respondent and upon perusing the records and having stood over for consideration till this day this Court delivered the following :

ORDER

Cost of Rs.3,000/- paid memo recorded. This petition is allowed.

Pronounced by me in open court this the 25th day of October 2024.

Sd/N.Renuga

District Munsif,

Sulur.

Draft/ Fair Order

I.A.No.5/2024 in

O.S.No.383/2017

Dated : 25.10.2024

DMC, Sulur.