

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, CUDDALORE

Present: Selvi.B.Phebe, B.A.,LLB.,

Additional District Munsif, Cuddalore

Monday, the 5th day of June – 2025

I.A.No.250/2024 in I.A.No.104/2024 in

O.S.No.92/2004

1. G.Muthukrishnan
2. G.Pandurangan
3. G.Gunasekaran
4. S.Sudhakaran
5. K.Siddharthan
6. K.Thangapazham
7. R.Ramamurthy

.....Petitioners/Plaintiffs

-Vs-

1. N.Janardhanan (Died)
2. S.Prabhakaran
3. S.Premkumar
4. S.Sathishkumar
5. L.Devanathan
6. P.Prabhavathy
7. S.Selvam

.....Respondents/Defendants

Counsels on Record:

For Petitioners : Mr.R.Rajavelavan

For R1 : Died

For R2 : No counter endorsement

For R3 to R6 : Exparte in suit

For R7 : Mr.S.Ramadas

This petition came before this Court in the presence of both counsels and upon perusal of records and having stood over for consideration till this day, this court delivers the following....

ORDER

This is an application taken out by Petitioner under Order 9 Rule 7 r/w Section 151 of C.P.C to pass an order to set aside the order dated 05.06.2024 in I.A.104/2024 and dispose of the same on merits.

2) Gist of the Affidavit filed by the Petitioner:-

(i) The 4th petitioner is 4th plaintiff in the main suit. The other petitioners are his cousin brothers who are co-plaintiffs in the suit. The 7th respondent filed an application in I.A.No.104/2024 on 12.03.2024 to set aside the ex-parte order dated 27.03.2012 passed against him, in which his counsel on record for co-respondents took notice and made an endorsement to the effect “No Counter”. However this petitioner took notice of the petition and prayed for time to file counter by making endorsement therein. But, it appears that by ignoring the said endorsement, the application has been allowed by this Court on 05.06.2024 on the basis of 'No objection' endorsement made by the counsel Mr.L.Devanathan who is appearing for co-defendants.

(ii) It is a mistake committed by the Court and it is an erroneous action on the part of the Court office. No party shall be prejudiced by the mistake committed by the Court. By the said act the 7th respondent has gained advantage of allowing the said application which is barred by law. I am herewith filing counter to the said

application in I.A.No.104 /2024.

(ii) In view of the legal maxim, 'Actus Curiae Neminem Gravabit' which means 'An act of the Court shall pre-judice no one', the said application needs to be reopened. Any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized, as the institution of litigation cannot be permitted to confer any advantage on a suitor by the act of the Court. Hence the petitioners prayed to pass an order to set aside the order dated 05.06.2024 made in I.A.No.104/2024 and to dispose of the same on merits.

3) Gist of Counter filed by the 7th Respondent:

(i) The 7th Respondent filed a petition in I.A.No.104/2024 on 12.03.2024 to set aside the exparte order passed against him. This Hon'ble Court allowed the petition on 05.06.2024. The 7th respondent bought part of the suit properties from the 1st Respondent which was legally registered. Hence, there is no harm to the petitioners in setting aside the exparte order made against him. The Petitioners/Plaintiffs have filed the suit before this Hon'ble Court, which lacks jurisdiction.

(ii) The 7th Respondent already has filed a petition under order 7 Rule 11 of C.P.C for rejection of plaint which was numbered in I.A.No.170/2024 on 04.07.2024. The Petitioners/Plaintiffs have not filed any counter and the petition is still pending. This shows that the petitioners/plaintiffs attitude to drag on the proceedings. The set-aside exparte order can be passed at any time during the pendency of the suit. It does not cover Article 137 of the Limitation Act. The original

suit filed before this Hon'ble Court erroneously itself deserves to be dismissed. Therefore, prayed that the petition may be dismissed with cost.

4) *The point for consideration is whether the petition filed by the petitioners under Order 9 Rule 7 r/w Section 151 of C.P.C is to be allowed or not?*

5) No witnesses were examined nor any documents were marked on either side.

Points:

6) On perusal of records, this court found that the petition in I.A.No.104/2024 has been allowed by oversight. The counsel for D2 and D6 has made an endorsement that he has no counter in the petition. However, on the other side the counsel for the other respondents have taken notice of the petition and sought time to file the counter. This was missed by the court and the officer has taken the “no counter” endorsement made the counsel as unequivocally applicable to all the respondents and passed the orders by allowing the petition.

7) Suit being filed in the year 2004, this petition has been pending for nearly 6 months. It is a settled principle of law that no person should be prejudiced by the act of the court. There is no higher principle for the guidance of the court than the one that no act of courts should harm a litigant and it is the bounden duty of the courts to see that if a person is harmed by a mistake of the court he should be restored to the position he would have occupied, but for that mistake. The maxim "actus curiae neminem gravabit" implies that judicial actions should not unfairly harm any party and that courts should act judiciously to prevent errors that could lead to injustice

In fine, this petition is allowed without costs in the interest of justice.

Dictated to Steno Typist, typed and printed out by her and corrected and pronounced by me in open court, on this day, the 5th of day of June 2025.

Additional District Munsif,
Cuddalore.

List of Witnesses and documents on Both sides:- -NiL-

Additional District Munsif,
Cuddalore.