

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, CUDDALORE

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

Additional District Munsif, Cuddalore

Monday, the 09th day of March – 2026

I.A.No.31/2026 in O.S.No.92/2004

P.Prabhavathy

.....Petitioner/ 6th Defendants

-Vs-

1. G.Muthukrishnan

2. G.Pandurangan

3. G.Gunasekaran

4. S.Sudhakaran

5. K.Sidharthan

6. K.Thangapazham

7. R.Ramamurthy

.....Respondents/Plaintiffs

8. Janardhanan(died)

9. S.Prabhakaran

10. S.Premkumar

11. S.Sathiskumar

12. L.Devanathan

13. S.Selvam

14. B.Umamaheswari

15. The State of Tamilnadu Rep. by its District
Collector, Cuddalore District.

16. The Sub Registrar, Manjakuppam, Cuddalore.

17. The Commissioner, Cuddalore Municipality,
Cuddalore.

18. The Tahsildar, Taluk Office, Cuddalore.
19. The Assistant Engineer(Town) Tamilnadu
Electricity Board (O.&M.) Cuddalore.
20. Raja @ Govindaraj
21. The Sub Registrar, Nellikuppam.
22. P.R.Pandian

.....Respondents/Defendants
1 to 5, 7 to 22

Counsels on Record:

For Petitioner : Mr.D.Dhivanjacob

For R1 to R7 : Mr.R.Rajavelavan

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 CPC to set aside the order passed on 15.10.2010.

2. Gist of the Affidavit filed by the Petitioner:

(i) The main suit has been filed by the respondents/plaintiffs for the alleged relief of declaration that the sale deed dated 12.12.2003, 5.1.2004 and 12.12.2003 as null and void and to declare that the judgment and decree delivered by Honorable 1 ASJ Court, Cuddalore in O.S.225/2003 dated 30.10.2003 as null and void and also for permanent injunction. After the disposal of the C.R.Ps. by the Honourable

Madras High Court, the main suit was taken up for further proceedings. But the earlier Counsel has not communicated the progress of the suit and in the meantime, petitioner was also suffering with arthritis and continuously bedridden and took prolonged treatment, for the same

(ii) Further she has undergone knee surgery and in the meantime she tried to know about the present status of the suit and she was informed by her counsel that she was set exparte on 15.10.2010 and due to non communication between herself and the earlier counsel and due to the prolonged illness, she could not pursue the case and now only petitioner came to know that the respondents/plaintiffs filed petition for reopening and for reception of documents for adducing further evidence. The delay was not willful nor wanton.

3. Gist of the Counter filed by the Respondent 4th Respondent and adopted by 1 to 3 and 5 & 6 Respondents:

(i) There is no plausible explanation set out in the affidavit as to why the petitioner did not contact the counsel for the last 16 years. The exparte order dated 15.10.2010 passed against the petitioner is not to be allowed as the present counsel on record for the petitioner has already moved an application for the petitioner in I.A.No. 251 of 2024 on 08.11.2024 and later withdrew the same on 26.06.2025, by noticing that she was already placed exparte. In such situation, the present application at this distance of time smacks of mala fide. The 2nd defendant-Prabakaran is the husband of the petitioner and both of them are living under one

roof. When the 2nd defendant is already represented through the same Advocate, there is nothing to prevent her to join with her husband.

(ii) The present applicant appeared before ASJ-1 Court, in O.S.No.8/2007 filed by her in relation to item number 1 of the plaint schedule property herein and subjected herself for Cross examination on 6.9.2022 and on 15.9.2022. The present applicant appeared before Principal District Court, in O.S.No.91 of 2011 and subjected herself for cross examination on 2.2.2015. The applicant has entered appearance through the same Advocate in O. S.No.440 of 2023 on the file of ADJ Court, Cuddalore.

(iii) The applicant has filed a suit on 03.01.2012 in O.S.No.4 of 2012 before Principal Sub Court, Cuddalore in respect of item No.1 of the present suit property against the lessee namely 5th defendant/Devanathan in the suit. The present petition filed after 16 years with bald assertions without backing of records is highly inordinate and shows negligence and inaction. The above facts will highlight and spotlight that the allegations of illness and non-communication of the earlier counsel are only invented. Even otherwise, the alleged non-communication of the earlier Counsel cannot be a ground to set aside the exparte order, in as much as the applicant being a litigant ought to be vigilant enough and should keep herself informed about the pending proceedings, whenever her husband is already on record through the same counsel and the status litigations can be accessed through E-Court service. Hence sought to dismiss the petition.

4. The point for consideration is whether the petition filed by the petitioners under Order 9 Rule 7 CPC is to be allowed or not?

5. No witnesses were examined on both sides. Ex.R1 to Ex.R5 were marked by the respondent.

6. **The learned counsel for the Respondent reiterated the counter averments and argued that,** though petition under Order 9 Rule 7 is to be dealt liberally, in the present case the petitioner has filed this petition after nearly 16 years and hence the delay should not be condoned. It is true that Order 9 Rule 7 has no limitation but it does not grant any right for being inactive and in complete negligence. The reason stated in the petition is that applicant is not well. Further the said affidavit is not backed by any documentary evidence. However, ExR1 to ExR5 would prove that she has appeared and deposed evidence before other courts in other cases. Apart from the above, the 2nd defendant in the present case is the husband of the petitioner and hence she cannot feign innocence about the progress of the case.

The affidavit exhibits inconsistent averments. Further it shows collusiveness on the part of petitioner. Order 9 Rule 7 of CPC requires good cause. In the present case it is not made out and hence the concept of liberal approach does not apply to the present case. The inordinate delay is not properly answered.

7. Despite opportunity, no representation on the side of petitioner for enquiry. Heard the respondent. Perused the records.

8. Analysis:

(i) The objection raised by the respondents in the present petition is that the petitioner has filed the petition to set aside the exparte order after a period of 16 years. The inordinate delay is not properly explained. The reason stated for non-appearance is that the petitioner is not well and so she was not able to communicate to the advocate. However, the respondent counsel has relied on Ex.R1 the cross examination of petitioner herein in O.S.No.91/2011 dated 02.02.2015 on the file of Principal District Munsif Court, Cuddalore and Ex. R2 the cross examination of petitioner herein in O.S.No.8/2007 dated 06.09.2022 on the file of Additional Sub Court-1, Cuddalore, Ex.R3 the cross examination of petitioner herein in O.S.No.8/2007 dated 15.09.2022 on the file of Additional Sub Court-1, Cuddalore, Ex.R4 the E- Court Status of the suit in O.S.No.440/2023 on the file of 1-ADJ Court, Cuddalore which shows that the petitioner herein has engaged the same counsel as herein for D2 in the above suit and Ex.R5 the E-Court Status of the instant suit indicating that of I.A.No.251/2024 was not pressed on the ground that the petitioner in I.A.No.251/2024 (Petitioner in this petition), was set exparte in the suit.

(ii) To counter Ex.R1 to Ex.R5, no documents supporting illness of the petitioner was filed in this petition. Ex. R1 to R5 prove that the petitioner has attended the court on all the above occasions to depose in those cases. Since all the documents Ex. R1 to R5 are record of Judicial Act under S. 74 of Bharatiya Sakshya Adhiniyam, 2023, it is presumed to be true. Further 2nd defendant is the husband of

the petitioner herein. That being the case, the petitioner cannot feign innocence of the progress of this suit as 2nd defendant is actively conducting the case. The inordinate delay of nearly 16 years shows clear negligence on the part of the petitioner herein. In light of all the above discussions, this court is of the view that the petitioner has not exhibited good cause for setting aside the exparte order.

In fine, petition dismissed with costs.

Dictated to Steno Typist, typed and printed out by her and corrected and pronounced by me in open court, on this day, the 09th day of March – 2026.

Additional District Munsif,
Cuddalore.

List of Witnesses and Documents on Petitioner sides: Nil.

List of Documents on Respondent both sides:

Ex.R1	02.02.2015	DW3 cross examination in O.S.No. 91/2011 on the file of Principal District Munsif Court, Cuddalore.	Copy
Ex.R2	06.09.2022	PW1 cross examination in O.S.No. 8/2007 on the file of Additional Sub Court-1, Cuddalore.	Copy
Ex.R3	15.09.2022	PW1 cross examination in O.S.No. 8/2007 on the file of Additional Sub Court-1, Cuddalore.	Copy

Ex.R4	02.02.2026	E- Court Status of the suit in O.S.No.440/2023 on the file of 1-ADJ Court, Cuddalore.	Copy
Ex.R5	26.06.2025	E-Court Status of the instant suit indicating the dismissal of I.A.251/2024.	Copy

Additional District Munsif,
Cuddalore.

ADM Court, Cuddalore.
Fair Order
