

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, CHIDAMBARAM

PRESENT: Tmt. SUGANIYA SRI B.A.B.L (Hons), M.L., PGDAML

ADDITIONAL DISTRICT MUNSIF, CHIDAMBARAM

Tuesday, the 5th day of July 2022

IA.No. 158/2022 in OS.No. 103/2013

1. C.Vijayalakshmi
2. C.Somasundaram
3. C. Surendar

..... Petitioners/15 to 17 Defendants

/Vs/

Swaminathan

....Respondent/ Plaintiff

For Petitioner	Thiru.V.K.Balasubramanian,Advocate
Respondent	Thiru.A.Sambandam, Advocate
Relief Claimed	Order 9 Rule 7 of CPC to set aside the ex-parte order Dated: 17.3.2022
Final Hearing	28.6.2022

Upon hearing the arguments of petitioners and respondents and after perusal of the entire records and having stood over for consideration till this day, this court delivers the following

ORDER

The case of petitioner:

1. The Petitioners are 15 to 17 Defendants and respondent is the plaintiff in original suit. The respondent filed the original suit for the relief of mandatory injunction as against the defendants. The petitioners are the legal heirs of 5th defen-

dant in the original suit and the 5th defendant has filed his written statement and also the matter was posted for trial. While being so, the 5th defendant died on 16.5.2021. Therefore, the petitioners are impleaded as defendants 15 to 17 in the original suit. This petitioner, being the wife of 5th defendant is pursuing the suit on behalf of 2nd and 3rd petitioners also, who is none other than their children. The original suit was pending on 17.3.2022 for written statement of the petitioners herein, since the written statement was not filed on that day, the petitioners were set exparte.

2. The 1st petitioner submits that she suffered from severe fever; stomach upset since 10.3.2022 and was taking treatment in home and in bed rest as advised by her doctor. The 2nd and 3rd petitioners are residing in Chennai at present. Therefore, the petitioners are unable to consult their advocate and to file their written statement. The act of the petitioners is neither wanton nor deliberate. Hence, the petitioners pray that the exparte order dt: 17.3.2022 passed against them, be set aside.

The case of the Respondent:

3. The respondent denied all the averments in the petition. The contention of the 1st Petitioner that she has suffered from fever is false and frivolous as such the petitioner was in the habit of doing all the work every day. The respondent submits that the petitioners knew the suit details at the time when there were impleaded as legal heirs in the original suit itself. According to the petitioners, the result of suit will not be favourable to them and therefore, the petitioners have wantonly left the suit for exparte order. This petition is filed only to prolong the case with no amount of good intention. This petition is not maintainable as such the petitioners have not filed any document to show that she has suffered from illness and also 2nd, 3rd petitioners did not filed any proof affidavit to support their stand. Hence this petition is liable to be dismissed.

4. No oral and documentary evidence were produced by both sides.
5. Now the point for consideration is whether the petitioners are entitled to get the relief as prayed for?

Point for consideration:

6. Heard both sides. Although the respondents has filed detailed counter, during the enquiry the respondents has made an endorsement that the “petition may be allowed on terms”. On careful perusal of entire case records, this court has come to the following observation. The original suit was filed on 22/4/2013 by the respondent/plaintiff as against the defendants for the relief of mandatory injunction with regard to suit schedule property. Since 23.02.2022, the matter was in the stage of filing of written statement by the 15-17 defendants/Petitioners. Therefore, on 17/3/2022, as there was no representation on the side of defendants, they were set exparte in the original suit. Immediately, on 6.4.2022 the Petitioners have come up with this petition.

7. Considering the fact that the trial of the suit has not yet commenced, and the petitioners herein have also filed this petition along with the memo thereby adopting the written statement of 7th defendant, and there was no delay in filing this setting aside exparte order petition, this court has come to the conclusion that there are valid reasons to allow this petition. With these circumstances, in the interest of justice that the defendants must be afforded an opportunity to put forth his defence in toto and to have substantial justice by complete adjudication and specifically to avoid multiplicity of proceedings, this petition is allowed on imposing cost.

In the result, this petition is allowed on payment of cost of Rs.200/- to the District Legal services Authority, Cuddalore on or before 14/7/2022. Failing which, this petition will be dismissed. Call on 14/7/2022 .

Dictated to the steno-typist, transcribed by her and typed in computer, corrected and pronounced by me in the open court this the 5th day of July 2022.

ADDITIONAL DISTRICT MUNSIF,
CHIDAMBARAM

List of witnesses and documents on the side of the petitioners:

NIL

List of witnesses and documents on the side of the respondents:

NIL

ADDITIONAL DISTRICT MUNSIF,
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