

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
CHENGALPATTU DISTRICT.**

Present : **Tmt.J.Mavis Deepika Sundaravadhana, M.A.,M.L.,**
Principal District Judge, Chengalpattu.

Wednesday the 26th day of March 2025

I.A.No.6/2024
in
O.S.No.237/2015

M.Nazir Ahamed . . . Petitioner / 4th Defendant.

/Vs/

1. Nargis Begum (deceased)
2. Mohammed Khaleelullah Sheriff
3. Thaswan Ahamed
4. Zeenath Begum . . . Respondents / Plaintiffs.
5. Nazir Ahamed
6. Jameel Ahamed (deceased)
7. Mumtaj Begum
8. Shaheen Sultana
9. Azhan Ahmed (minor)
10. J.Arfaan Ahmed (minor)
11. Surya Begum
12. Khaiser Jahan . . . Respondents / Defendants
1 to 3, 5 to 9.

This petition came up before me in this court for final hearing on 17.3.2025 in the presence of Tvl.M.J.Jaseem Mohammed, B.Baskar and S.Santhanam, Advocates for the petitioner, Tvl.T.Thanigaivel and P.Haribabu, Advocates for the respondents 2 to 4, the other respondents are

formal parties, upon hearing the arguments of both side counsel, perusing the entire records and having stood over for consideration till this day, this court delivers the following,

ORDER

This petition is filed by the petitioner / 4th defendant under Order 9 Rule 7 read with Section 151 of CPC to set aside the exparte order dated 21.9.2015 passed against him in the suit.

2. The case of the petitioner in brief :

The petitioner is the 4th defendant in the above suit. The above suit is filed by the original plaintiffs 1. Mrs. Nargis begum 2. Mrs. Surya Begum and 3. Mrs. Khaizer Jahan for partition of the properties described in A and B of the plaint schedule and allotment of 1/8 share from and out of the 1/2 share belonging to the defendants 1 and 2. When the petitioner wanted to eagerly participate in the proceedings before this Court but the petitioner was persuaded by his cousin Mr. Jameel Ahamed the second defendant in the above suit who took the whole responsibility on his shoulders and assured me during his life time that the above suit will be withdrawn by the original plaintiffs at the initial or mid stages of the proceeding and petitioner's participation should not spoil the healthy atmosphere and cordial relationship for compromising the issue. The petitioner took their words in its face value and he honestly believed that

since no claim is made by the plaintiffs as against petitioner's share and the sisters who also expressed remorse & regretted for having filed the above suit in haste. It will not be out of place to state that all the three sisters, the original plaintiffs 1 to 3 have not pressed the above suit against petitioner. The said Jameel Ahmed - the second defendant in the above suit breathed his last on 03.06.2021 - Due to his untimely and sudden demise during the pandemic the entire family was thrown out of gear. This resulted in chaos, confusion & Commotion apart from the irreparable injury & irretrievable loss and shock in the family of the original plaintiffs and the defendants. The petitioner was professionally pre-occupied, and due to unforeseen circumstances and the sudden demise of my cousin the 2nd defendant herein has resulted in this pell mell. The petitioner has been set ex-parte by this court by its order date 21.09.2015. His non-appearance in the above suit is neither willful nor wanton and in view of the above change of circumstances and in the interest of justice it is absolutely necessary for me to defend the above suit as the petitioner has a very good case on merits. The first defendant who is the eldest member of the family is having serious health issues and unable prosecute the above suit and the legal heirs of the 2nd defendant are also not acquainted and conversant with the facts of the above case. Unless this Hon'ble court set aside the exparte order dated 21.09.2015 passed against the petitioner, he will be put irreparable

loss and hardship and no prejudice will be caused to the plaintiffs. The petitioner has also filed his written statement along with application. Hence, the petition.

3. The brief averments of counter filed by the respondents 2 to 4 is as follows :

The non-traversal of each and every allegations of the petition does not amount to admission on the part of these respondents / plaintiffs 2 to 4. As a matter of original fact is that the above suit has filed by Mrs. Nargis Begum, who is the wife of 2nd respondent / 2nd plaintiff herein and the mother of 3rd & 4th respondents/plaintiffs herein along with her sisters, who are now the respondents 11 & 12/ defendants 8 & 9 herein in as against their brothers and sister, who are the respondents 5 to 7/ defendants 1 to 3 for partition of the suit schedule mentioned properties by meters and bounds and to allot 1/8th share each to them and other reliefs. This petitioner / 4th defendant, who is holding the half share of the suit schedule mentioned properties, he has been added as a formal party in the above suit and as such there is no relief sought against him and also that is the main reason this petitioner/4th defendant did not appear before this Court even after receiving the court notice in the above case, then only he was called absent and set ex-parte by this Court on 02.11.2015 itself and thereafter the other contested defendants herein had filed their written statement in the

above suit and the issues were also framed this Court and then the above suit was posted for trial, but after the long laps of 9 years this petitioner / 4th defendant has filed this frivolous petition. Hence it is clearly established that this petition has no merits at all and it is liable to be dismissed in limini. Further on perusal of the said petition, there is no documentary evidence submitted by the petitioner/4th defendant to prove his genuineness as the averments stated in his affidavit filed in support of the petition. The respondent/plaintiffs 2 to 4 further submit that they strictly calls upon the petitioner / 4th defendant to disclose the real facts that why he did not come forward to file the said application for the past 9 years and even after the death of 2nd defendant, “this petitioner /4th defendant has waited for the past 3 years to file the same as the 2nd defendant died on 03.06.2021, but the set aside petition filed on 09.09.2024. At this vital point of ground alone this petition is liable to be dismissed. Moreover Mrs. KhaiserJahan, who was the 3rd plaintiff and the transposed as the 9th defendant herein had deposed her evidence before this Hon’ble Court on 11.09.2018 in support of the plaintiff’s case and thereafter she left India and settled in UAE along with her daughter due to which the sudden demise of her husband in the year 2021 and like so Mrs. Surya Begum, who was the 2nd plaintiff and then transposed as the 8th defendant herein has kept herself aside from the above case due to which she has affecting the knee decease, as such she is in bed

ridden, hence the above facts are the original reason for the previous plaintiffs 2 & 3 are keeping away from the case proceedings and not alleged by the petitioner / 4th defendant. The respondents / plaintiffs 2 to 4 further submit that the real things are being so now the petitioner/4th defendant by completely suppressed the true facts and circumstances and to mislead this Hon'ble Court. The petitioner / 4th defendant is not entitled to any relief sought for in the petition. There is no prima facie case for the petitioner/4th defendant. There is no merit in the petition. Hence, prayed for dismissal of petition.

4. The point that arises for consideration is whether the application is liable to be allowed.

5. Point :

This petition is filed by the petitioner / 4th defendant to set aside the exparte order passed against him in the suit on 21.9.2015.

6. The reason stated in the petition that the petitioner / D4 professionally preoccupied due to unforeseen circumstances and the sudden demise of D2 resulted in confusion in the family. It is admitted the summons served on this defendant. Except the above reason, absolutely there is no reason why the petitioner / 4th defendant failed to appear before the court.

7. Counter of the respondent / plaintiff filed. In the counter it is objected that the averments in the petition are false, and misleading. It is alleged this petition is only in order to drag the proceedings from reaching finality. It is alleged this application is filed only to harass the respondents.

8. The petitioner is the 4th defendant in the suit. The suit is at the stage of DW1 cross examination. This application is highly belated only will cause high decree of inconvenience to the plaintiff. However since all are belonged to same family, and the suit is filed for partition this court inclined to allow the application on payment of sufficient cost.

9. **As the result, petition will be allowed on payment of cost of Rs.5,000/- to the respondent / plaintiff to be paid on or before 24.4.2025, otherwise petition stands dismissed. Call on 25.4.2025.**

Dictated by me to the steno-typist, computerized by her directly, corrected and pronounced by me in open court, on this the 26th day of March 2025.

Principal District Judge,
Chengalpattu.

Both side witnesses and exhibits :
Nil.

Principal District Judge,
Chengalpattu.