

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE
KANCHEEPURAM DISTRICT AT CHENGALPATTU**

Present: **Tmt.K.Kayathri, M.A.B.L.**
Additional District Judge,
Chengalpattu.

Tuesday, the 25th day of June.2024
I.A.No.4/2024 in O.S.296/2023
CNR No:TNKP01-003212-2023

1. Pachaiyappan
2. Sasirekai
3. Kangeyan Pachaiyappan ... Petitioners/defendants

..Vs...

Balaji Pachaiyappan
...Represented by his Power Agent
Tmt.S. Janaki Gayathri ...Respondent/plaintiff

This Petition coming before this court on 30.4.2024 for final hearing in the presence of M/s. Sunil Sudhakar Shanker, P.S.Sureshababu, K.Venkatesan and T.Aswini, Counsels for the Petitioners/defendants and M/s.P.T.Sashikumar, K.Umamaheswari, S.Aarthi, B.Vignesh and S.Angayee, Counsels for the Respondent/plaintiff and upon hearing the arguments of both sides and perusing the material records and having stood over for consideration till this day, this Court delivered the following:-

ORDER

The petition is filed under Order 9 Rule 7 C.P.C to set aside the exparte order dt:16.10.2023 passed in the above suit in O.S.296/2023.

2. The petition averments in brief as follows:-

The petitioner is the 3rd defendant in the above suit and has filed the petition for himself and on behalf of other petitioners who are his parents. The

above suit stands posted for filing of Vakalath on 31.8.2023. Immediately on receipt of summons, the petitioner's counsel has filed vakalathnama on behalf of all the defendants on 3.7.2023 with SR Nos.1945, 1946 and 1947. Due to oversight, the same was not put up in the suit bundle by the Registry. When the suit was posted for hearing on 31.8.2023, the 3rd petitioner has engaged his counsel to appear on behalf of all the defendants as it would be difficult for 3rd petitioner's elderly parents to be physically present for the proceedings. When the matter was called on 31.8.2023, this court was under the impression that no vakalath has been filed on behalf of defendant. The defendant's counsel also could not present on 31.8.2023 and the matter was adjourned on 16.10.2023. In the meantime, when the petitioners came to know that the vakalath was not put up in the suit bundle, they have sent another set of vakalath on 16.9.2023 to enable their counsel to file the same. Since the petitioner's counsel fell ill, he could not attend the hearing on 16.10.2023 and in the meantime, the petitioners were set exparte due to non representation. The non appearance of petitioner's counsel on 16.10.2023 and non filing of the Vakalathnamas on behalf of the petitioners is neither wilful nor wanton but due to sudden illness of their counsel. Hence the petition.

3. The counter averments in brief is as follows:-

The petition is unsustainable in law. The allegations contained in the affidavit filed in support of the petition are all false. The reason stated by the petitioners as to the alleged vakalath already filed by them in S.R.Nos.1945, 1946 and 1947 and was not put by in the bundle by the Registry is denied as false. The discrepancies in the dates mentioned in the Vakalath and Rotary has not been properly explained by the petitioners. The petitioners have failed to mention about the details of certificate/signature obtained from Notary and their

affidavit in respect of the same. Under the above said circumstances, the petition is liable to be dismissed.

4. The point for consideration:-

1. Whether the petition deserves to be allowed or not?

5. POINTS :-

Heard both sides. Records perused. On careful perusal of records, it reveals that the suit has been filed for the relief of declaration to declare that the plaintiff is entitled to half share in the suit properties, to declare that the settlement deed dated 4.1.2019 executed by defendants 1 and 2 in favour of 3rd defendant as share and nominal and for division of suit properties into two equal parts and for permanent injunction. The suit is of the year 2023 and is pending for Exparte Arguments. This petition has been filed u/o.9 rule.7 of CPC to set aside the exparte order dt:16.10.2023 passed in the above suit. According to petitioners, immediately on receipt of summons, the petitioner's counsel has filed vakalathnama on behalf of all the defendants on 3.7.2023 with SR Nos.1945, 1946 and 1947. Due to oversight, the same was not put up in the suit bundle by the Registry. It is the main contention of the petitioners that when the petitioners came to know that the vakalath was not put up in the suit bundle, they have sent another set of vakalath on 16.9.2023 to enable their counsel to file the same. Since the petitioner's counsel fell ill, he could not attend the hearing on 16.10.2023 and in the meantime, the petitioners were set exparte due to non representation. The non filing of the Vakalathnamas on behalf of the petitioners is neither wilful nor wanton but due to sudden illness of their counsel.

Per contra, the respondent/plaintiff has filed their counter by contending that the discrepancies in the dates mentioned in the Vakalath and Rotary has not been properly explained by the petitioners. The petitioners have failed to mention

about the details of certificate/signature obtained from Notary and their affidavit in respect of the same. Under the above said circumstances, the petition is liable to be dismissed.

6. In these rival contentions, it is evident from records that the petitioners are now residing at United States of America and after service of summons to the petitioners since they failed to file vakalath and non representation, they were set exparte on 16.10.2023. The main contention of the petitioners is that the non filing of the Vakalathnamas on behalf of the petitioners is neither wilful nor wanton but due to sudden illness of their counsel. On the other hand, the respondent /plaintiff stoutly denied the allegations and contended that the reasons stated by the petitioners are all false. Thus, considering the facts and circumstances of the case and considering the nature of dispute involved in the suit, in order to given an opportunity to the petitioners/defendants to contest the case on merits, this court is inclined to allow this application with necessary terms of cost in the interest of justice and to afford reasonable opportunity to the petitioners.

Finally, this petition is allowed on condition to pay a cost of Rs.2000/- by the petitioners to the respondent on or before 30.7.2024. Call on 31.7.2024.

Dictated to the Shorthand writer and directly typed by her and corrected and pronounced by me in open Court, this the 25th day of June 2024.

sd/-K.Kayathri

Additional District & Sessions Judge
Kancheepuram District at Chengalpattu.

Exhibits and witnesses on either side: Nil

sd/-K.Kayathri

Additional District & Sessions Judge
Kancheepuram District at Chengalpattu.

Draft/Fair Order
I. A.No. 4/2024 in
O.S.No. 296/2023
Dated: 25.6.2024
ADJ/CPT

**I. A.No. 4/2024 in
O.S.No. 296/2023
Dated: 25.6.2024**

Order Passed

Finally, this petition is allowed on condition to pay a cost of Rs.2000/- by the petitioners to the respondent on or before 30.7.2024. Call on 31.7.2024.

ADJ/CPT