

IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM

PRESENT: Tmt. V.Devapriya, B.Sc., M.L.,

District Munsif, Madurantakam

Tuesday, the 26th day of November, 2024

I.A.No.8/2024

in

O.S.No.49/2022

1. Ammu @ Roselin joy

2. Jackulin joy

3. Karolin joy

4. Ilin joy

...Petitioners/Defendants 3 to 6

-Vs-

1. Biyulin joy

2. Mery Rathinavathi

3. Paul Ropinsonrai

...1st Respondent/Plaintiff

...Respondents 2 & 3/Defendants 1 & 2

This petition coming up before me on 15.11.2024 for final hearing in the presence of, Thiru.E.Sivalingam, counsel for Petitioners/Defendants 3 to 6, and Thiru.M.Mani, counsel for the 1st Respondent/Plaintiff, and the 2nd Respondent/1st Defendant having been set exparte in the main suit and Thiru.V.Selvakumar, counsel for the 3rd Respondent/ 2nd Defendant and after hearing both sides and upon perusing the materials placed on record, and having stood over for consideration till this day, this court delivers the following,

ORDER

This petition has been filed by the Petitioners/Defendants 3 to 6 under Order IX Rule 7 of Code of Civil Procedure, to set aside the exparte order passed against them on 07.09.2022.

2.The averments stated in the petition in brief :

The 1st Respondent/Plaintiff had filed the above suit for partition. The above suit was posted on 07.09.2022 for filing written statement. On that day, the Petitioner/ 3rd Defendant was affected jaundice and he was taking treatment of Tamil Medicine. Therefore, he could not come to court and give instruction to his counsel for filing written statement. Therefore, the Petitioners/Defendants 3 to 6 were set exparte in the above suit on 07.09.2022. Hence the petition.

3. The averments stated in the counter filed by the 1st Respondent/Plaintiff, in brief:

This petition is not maintainable under law and on facts. The averments in the affidavit are false. This petition is filed belatedly only to drag on the proceedings and to divert the case. There is no merits in this petition. Hence, this petition is liable to be dismissed with costs.

4. The learned counsel for 3rd Respondent/ 2nd Defendant had endorsed that this petition may be allowed on costs.

5. The point for determination is whether this petition is to be allowed or not?

6. No Exhibits marked and no witnesses were examined on both sides.

7. Heard both sides and perused the records.

8. The Petitioners/Defendants 3 to 6 had filed this petition to set aside the order dated 07.09.2022 setting them exparte in the above suit, on the ground of illness. The

1st Respondent/Plaintiff had resisted the petition stating that the Petitioners/Defendants 3 to 6 had filed this petition belatedly, to drag on the proceedings.

9. The Petitioners/Defendants 3 to 6 had filed their written statement along with this petition. The reason stated by the Petitioners/Defendants 3 to 6 is sufficient. The 1st Respondent/Plaintiff had filed the above suit for partition and therefore, this court is of the opinion that a fair opportunity has to be given to the Petitioners/Defendants 3 to 6 to conduct the above suit. Hence, in the interest of justice and for complete adjudication and to avoid multiplicity of proceedings, this court is inclined to allow this petition on costs.

10. In the result, this petition is allowed on costs of Rs.500/- to be paid by the Petitioners/Defendants 3 to 6, to 1st Respondent/Plaintiff on or before 03.12.2024, failing which this petition will be automatically dismissed. Call on 03.12.2024.

Dictated to the stenographer and typed by her and corrected and pronounced by me in open court on this the 26th day of November, 2024.

District Munsif
Madurantakam

Petitioner side witnesses and documents:

Nil

Respondents side witnesses and documents:

Nil

District Munsif
Madurantakam