

IN THE III ADDITIONAL CITY CIVIL COURT, CHENNAI

**Present: Tmt. K.Geetha Rani, M.A, M.L.,
III Additional Judge,**

Tuesday, the 20th day of January 2026

I.A.No.01 of 2023

in

O.S.No.4941/2011

1. N. Lakshmi, W/o. S. Nagarajan

2. S. Nagarajan, S/o. E. Subramania

Both residing at, No.92, 5th Street, Anna Sathya Nagar, Anna Nagar East, Chennai-600 102.

...Petitioners/Plaintiffs

Vs.

1. A. Kumar, S/o. Arumugam, residing at No.184, Periyar Street, Thillaiyadi Valliammal Nagar, Thirumangalam, Chennai-600 040.

...1st Respondent/1st Defendant

2. Mrs. P. Bhanu Priya(Died)

3. R. Puroshothaman, S/o. Ranganathan

4. P. Dhamodharan, S/o. R. Puroshothaman

5. P. Sangeetha, D/o. R. Puroshothaman

3 to 5 are residing at No.69A, Appar Street, Thiruvallieswar Nagar, Chennai-600 040.

... Respondents 3 to 5/Proposed

Defendants 3 to 5

* Amended as per order dated 04.10.2024 in I.A.No.5 of 2024

This petition came up on 24.10.2025 for final hearing before this Court in the presence of M/s. K. Surendranath, A.C. Kumaragurubaran and M.M. Kumaravelu Counsels for the Petitioners/Plaintiffs and of M/s. Mayakannan

Counsel for the 1st Respondent/ 1st Defendant, and upon hearing the arguments on both sides and having stood over for consideration till this day, this Court delivered the following:

ORDER

This petition filed Under Order 9 Rule 9 of CPC to set aside the order dated 07.06.2019 dismissing the suit for default and restore the same on file.

2. The averments in the affidavit in support of the petition in short as follows:

The petitioner is the counsel incharge and conducting the case for the petitioners/plaintiffs here in as such he is filing this affidavit.

He submit that the plaintiffs have filed the above suit seeking partition of the suit property and for separate possession besides for the relief of mandatory injunction for demolishing the illegal construction put by the second defendant herein in the portion of the suit property. It may not be necessary to traverse into detail for the purpose of this petition and he crave eave of this Hon'ble court to refer to the plaint and the written statement for complete facts.

He submit that the above suit is posted for trial today. He further state that he have gone to Erode in connection with his daughter's marriage proposal on 06.06.2019 and inspite my best efforts he could not reach chennai today in the morning. He returned only by 1.pm. Though he have informed his junior counsel to represent the case, he was also unable to appear when the case was called and that the is plaintiff who is the sister of the 1st defendant and she who deposing evidence was

also unable to appear due to fever and as there was no representation, the suit was dismissed for default by this Hon'ble Court. He further state that the non representation either by myself or by my junior and the non appearance by the plaintiffs is neither willful nor wanton but due to the reasons stated above. He further submit that unless the suit is restored, the plaintiffs will be seriously prejudiced and for my fault they should not be penalized. On the other and no prejudice will cause to the defendants here in if the suit is restored and the same is decided on merits.

3. The averments in the affidavit in support of the counter in short as follows:

The 1st respondent/1st defendant submits that the petitioners/plaintiffs seeking partition of the suit property and for separate possession besides for relief of mandatory injunction not against the 1st respondent/1st defendant , the relief asked against 2nd respondent/ 2nd defendant only.

The 1st respondent/1st defendant denied the allegation that the parties of the suit does not be necessary to traverse into detail the respective contentions of the suit and the 1st respondent/ 1st defendant herein no knowledge of the suit before receiving the notice in the above I.A.1 of 2024, and further, the petitioner stated in the affidavit that he has filed petition only without affidavit. How it is relevant fact that without affidavit the petition only can not be filed by a practicing advocate facts is not reliable one.

The 1st respondent/1st defendant denied allegation stated in para 3 of the affidavit even though that the counsel on record attended his daughters marriage proposal in Erode, he wasa not able to attend the case and his junior also not

represented before this Hon'ble Court but why not the petitioner/plaintiff has not same of liability of the counsel on record which are all not believable statement of the petitioner/plaintiff and this 1st respondent/ 1st defendant submit that the case was filed in the year 2011 past 8 years no improvement to give notice to the opposite party. Why because the suit is not filed by the petitioner's (1st plaintiffs with care and responsible).

He further stated the suit property was owned by the father of the 1st respondent/ 1st defendant and the 1st petitioner/1st plaintiff but the father of the 1st petitioner/ 1st plaintiff and the 1st respondent/ 1st defendant executed a will to in favour of the 1st respondent/ 1st defendant in full before settlement of 50% of the suit property to the 1st petitioner/1st plaintiff, the petitioner/plaintiff has no knowledge of the will in favour of the 1st respondent/1st defendant and the 1st plaintiff settled the same of 50% of the suit property to in the name of her husband for sake of the same what is the necessary of the settlement to in favour of the husband before that full property has been settled in a will to infavour of the 1st respondent/1st defendant by the father of the parties of 1st petitioner and 1st defendant it was registered will and further denied of the plaintiff allegation that she was unable to appear due to fever which is also not believable on the particular day of hearing that is on 06.06.2019.

This petition has been filed in the year 2019 within time after the dismissed of the suit within one month and the petition taken in the year 2024 after 5 years even the petition filed in time but it cannot be encourage to take the same after 5 years it is very much irreparable and it is not an usual practies now a days before this Hon'ble

Court and also suit property in full executed in will to in favour of the 1st defendant if the petition is allowed it will be prejudice the legal right of the 1st defendant herein. Therefore it is prayed this Hon'ble court may be pleased to dismiss the restoration petition.

4. Point for consideration:

Whether the petition is to be allowed or not?

5. No oral evidence adduced and no documents produced on either side.

6. Point :

This petition has been filed Under Order 9 Rule 9 CPC to restore the suit which has been dismissed for default on 07.06.2019. The petitioner has stated that the above suit is posted for the trial, the counsel for the petitioner has stated that he has gone to Erode in connection with his daughters Marriage proposals on 06.06.2019 and inspite of my best efforts he could not reach chennai on the date of hearing that too in the morning. The petitioner further stated that returned only by 1.pm. Though he has informed the same to his junior to represent the case, he was also unable to appear when the case was called and that time who is the sister of the 1st defendant and she was deposing evidence was also unable to appear due to fever and there was no representation the suit was dismissed for default by this Court. The non representation either by myself or by my junior and the non appearance by the

plaintiffs is neither willful nor wanton but due to the reasons stated above. He further submit that unless the suit is restored, the plaintiffs will be seriously prejudiced and for my fault they should not be penalized. On the other hand no prejudice caused to the defendant herein if the suit is restored and the same is decided on merits. Hence this petition may be allowed.

Whereas in the counter the respondent has denied allegation that the parties of the suit does not be necessary to traverse into detail of the respective contentions of the suit. The 1st respondent/1st defendant herein have no knowledge of the suit before receiving the notice in the above I.A. 1 of 2024, and further the petitioner stated in the affidavit that he has filed a petition only without affidavit. How it is relevant fact that without affidavit the petition cannot be filed by a practicing advocate which facts is not realiable one. The allegation mentioned in the para 3 was denied by the the respondent the case was filed in the year 2011 past 8 years no improvement to give notice to the opposite party. Why because the suit is not filed by the 1st plaintiffs care and responsible. He further stated the suit property was owned by the father of the 1st respondent/ 1st defendant and the 1st petitioner/1st plaintiff but the father of the 1st petitioner/ 1st plaintiff and the 1st respondent/ 1st defendant executed a will in favour of the 1st respondent/ 1st defendant in full before settlement of 50% of the suit property to the 1st petitioner/1st plaintiff, the petitioner/plaintiff has no knowledge of the will in favour of the 1st respondent/1st defendant and the 1st plaintiff settled the same of 50% of the suit property to in the name of her husband for sake of the same what is the necessary of the settlement to in favour of the husband before that full

property has been settled in a will to and in favour of the 1st respondent/1st defendant by the father of the parties of 1st petitioner and 1st defendant it was registered will and further denied of the plaintiff allegation that she was unable to appear due to fever which is also not believable on the particular day of hearing that is on 06.06.2019. This petition has been filed in the year 2019 within time after the dismissed of the suit within one month and the petition taken in the year 2024 after 5 years even the petition filed in time but it cannot be encourage to take the same after 5 years, and it is not an usual practices now a days before this Hon'ble Court and also suit property in full executed in will to in favour of the 1st defendant if the petition is allowed it will be prejudice the legal right of the 1st defendant herein. Therefore it is prayed this Hon'ble court may be pleased to dismiss the restoration petition.

Heard both side the mere contention on the petitioner/plaintiff is and the matter has been listed for trial neither the counsel nor the junior counsel nor the plaintiff has appeared before the court each and every one has stated one or other reason the senior counsel has stated that he went to erode in connection with his daughter's marriage talk and the junior was not able to appear before the court and the plaintiff was not feeling well hence she was not appear before the court and no one has filed any proof to show that senior counsel is went to erode whether by flight or by train no tickets has been filed with regard to the travel and if really the plaintiff is not feeling well and she has been affected by the fever definitely she would have produce a medical document to prove the stand that has been taken by her and nothing has been done in

this case and apart from that the respondent/defendant has stated that the entire property was settled by the father of the plaintiff and the father of the respondent in a Will and the same was registered and this petitioner knowing well she does not have right in the property has filed the vexatious suit. Hence the petition filed by the petitioner to restore the suit is not maintainable and the same to be dismissed for but after going through the document which has been stated by the petitioner that is in favour of the petitioner/plaintiff 50% of the property is settled by their father but whereas after settling 50% of the property 100% of the property has been given to the brother of the plaintiff by executing the Will and after death of the father definitely the will came into force but at the same time the Will has to be adjudicated by way of filing a probate of Will but whether it has been taken place or not disclosed in this case, however the genuinity of the will has to be decided only after examining the witnesses to the will that time only it can be decided that whether the father has executed will after half of the property has been settled in favour of the petitioner/plaintiff, if the suit is not restored and the trial has not been commenced this facts has not been come into light and the opportunity was brought to those facts given was also curtail right of the petitioner/plaintiff and further it was stated that the petition was filed within one month but it was numbered after 5 years only because of the courts activity such a delay has been occurred it is true that as soon as petition has been filed the person who received the said petition has kept in the bundle has got transferred once the matter has been dismissed for default the same was sent to the record room and thereafter after knowing the petition it was brought

before the court and it was found that the said petition was filed in time but not numbered hence the court was not suppose to insist the petition to file a condone delay petition because there was a delay of 5 years the court accept the delay in numbering the case because of the attitude of the person who is not now holding this said post but whereas necessary memo has been issued to such person and however for the error committed by this staff this plaintiff/petitioner should not be affected his right in the property as to be proved through a document and also through the averments mentioned in the plaint. However the petitioner has not approached this court after filing the petition to restore the suit what happened to the petition filed by him hence the petition is allowed on cost of Rs.3000/- to the District Mediation and Concilation Centre, Chennai on or before 30.01.2020. Call on 30.01.2020.

In the result, this petition is allowed. On cost of Rs.3000/- to the District Mediation and Concilation Centre, Chennai on or before 30.01.2026. Call on 30.01.2026.

Directly dictated to the stenographer, computerized by her, corrected and pronounced by me in the open Court, this the 20th day of January 2026.

III Additional Judge,
City Civil Court, Chennai.

List of Witness and Exhibits on both side : Nil

III Additional Judge,
City Civil Court, Chennai.

Draft / Fair : Order
I.A.No.01/2023– in
O.S.No.4941 of 2011
Dated: 20-01-2026
III Additional City Civil
Court, Chennai.