

IN THE COURT OF ADDITIONAL DISTRICT JUDGE, KRISHNAGIRI

**Present: Thiru.V. Damodaran, B.L.M.,M.L.,
Additional District Judge, Krishnagiri**

Tuesday, the 15th day of October 2024

I.A.No.9/2024 in IA No.8/2024 in OS.No.34/2021

CNR.No.TNKI01-000458-2021

Mani, Petitioner/Petitioner/9th defendant

/Versus/

P.Samuvel, ... Respondents/ Respondent/ Plaintiff

This petition was coming up before me finally on 03.10.2024 in the presence of Thiru.E.Thiruvarasan, Advocate appearing for the Petitioner/Petitioner/9th defendant and Thiru.T.Anbzhagan, Advocate appearing for the Respondents/ Respondent/ Plaintiff and upon hearing the arguments of Petitioners and Respondents side and on perusal of available records, and having stood over for consideration till date, this Court deliver the following:-

ORDER

The petition filed under Sec.148 of CPC to enlarge the time for the payment cost of Rs.750/- ordered in IA No.8/2024.

2.The averments contained in the petition is as follows:-

The petitioner is the 9th defendant in the suit, the respondent filed suit against the petitioner for partition and other reliefs. The suit was posted for cross of PW-1 on 23.02.2024, on the day the petitioner was not well, as such in the absence of the petitioner, the counsel did not cross examine the PW-1, as such the exparte order passed on 23.02.2024 and to set aside the exparte order IA

No.8/2024 was filed and this court has ordered to pay costs of Rs.750/- on or before 27.06.2024. It is further contended in that petition that the said amount was tendered by the petitioner/ 9th defendant but it was refused by the respondent / plaintiff counsel herein, and there is no willful default on the part of the petitioner. The petitioner further states he has got good case for contest, as such prayed for enlargement of time to pay the costs Rs.750/- in this case.

3) The respondent filed counter is as follows:

The petition is not maintainable either in law or on facts and it is liable to be dismissed with costs. This respondent does not admit any of the allegations made in the petition except those that are specifically admitted herein. The respondent/ plaintiff deny the allegations made by the petitioner/ 9th defendant in the affidavit filed by him. This respondent/ plaintiff deny the averments stated in the affidavit filed by the petitioner/ 9th defendant. The petitioner / 9th defendant simply stated the reason is not correct. The petitioner / 9th defendant know the suit stages and it was posted in the special list and leave it set exparte and after long time, he filed this petition to prolong the proceedings. There is no concrete reason to allow this petition. If this petition is not allowed, there is no prejudiced caused to the petitioner / defendant. Hence prayed for dismissal of the petition.

4) Point for consideration:

Whether the petition filed by the petitioners/ plaintiffs under Sec.148 of CPC, has to be allowed or not?

5) Both sides heard.

6) **Point**

Ongoing through the records place before the court IA No.8/2024 was filed by the petitioner / 9th defendant in this case to set aside the exparte order passed against him on 23.02.2024, and in IA No.8/2024 on 19.06.2024 the respondent counsel made endorsement that the petition may be allowed and costs. Accordingly this court has ordered, the petitioner/ 9th defendant to pay a costs of Rs.750/- on or before 26.06.2024 and the case was posted on 27.06.2024 for passing further order. When the case was posed for further orders in IA No.8/2024 on 27.06.2024, the petitioner did not come forward to state about whether the payment was made or not, but subsequently thereafter four hearings come out with the application under Sec.148 of CPC.

It is stated by the petitioner/ 9th defendant that the amount of Rs.750/- being the costs in IA No.8/2024 was tendered, but the said amount was refused by the respondent/ plaintiff herein. On the other hand the learned counsel for the respondent/ plaintiff submitted that the said amount of Rs.750/- was not tendered before 27.06.2024, but thereafter only the said amount was tendered.

Taking into consideration that the suit for filed partition, only when parties were allowed to contest the case they can effectively put forth the claim before the court and a decree and judgment can passed on merits. If any one of the party were not allowed to participate in the trial proceeding it will affect the rights in that property. As a matter affording a fair opportunity to the petitioner/ 9th defendant

in this case, this petition is allowed and payment of costs Rs.750/- to be payable to the respondent/ plaintiff counsel on or before 29.10.2024 failing which this petitions stands dismissed call on 30.10.2024.

In the result, this petition is allowed, and payment of costs Rs.750/- to be payable to the respondent/ plaintiff counsel on or before 29.10.2024 failing which this petitions stands dismissed call on 30.10.2024.

Dictated to the Stenographer, directly typed by her, corrected and pronounced by me in the open court today this the 15th day of October, 2024.

Sd/- V. Damodaran,
Additional District Judge,
Krishnagiri.

Annexure: Nil

Sd/- V. Damodaran,
Additional District Judge,
Krishnagiri.

// True Copy//

Additional District Judge,
Krishnagiri.