

**IN THE COURT OF DISTRICT MUNSIF UTHANGARAI
KRISHNAGIRI DISTRICT**

**Present : Thiru. G. Amar Anand, B.A.LL.B (Hons), LL.M.
District Munsif, Uthangarai**

On this Monday, the 26th day of February 2024

I.A.No. 03 of 2023 in O.S.No. 19 of 2022

TNKI13-000019-2022

1. Murugan
2. Valarmathi
3. Arumugam

...Petitioners / Defendants

/versus/

Murugesan

...Respondent / Plaintiff

This interlocutory application came up before this Court on 22.02.2024 for final hearing in the presence of advocate Thiru. R. Chandrasekaran, the learned counsel for the petitioners and advocate Thiru. T. Vijayan, the learned counsel for the respondent and upon hearing both sides and on perusal of records and having stood over for consideration till date, this Court delivers the following:

ORDER

The application has been filed under Order IX Rule 7 of the Code of Civil Procedure, 1908 for setting aside the *ex parte* order against the petitioners / defendants dated 08.12.2022.

The averments of the petitioner in brief:

1. The petitioners herein are the defendants in the suit filed for declaration and perpetual injunction. The petitioners aver that the petitioners were instructed by their counsel to bring the necessary documents to file the written statement and were instructed that the petitioners should come to the Court and office when called. The petitioner avers that they were unable to meet their counsel due to work out of the station and the counsel was also unable to reach the petitioners and when the

petitioners met their counsel on an occasion, the petitioners came to know about the suit was ordered to be heard *ex parte* against the petitioners on 08.12.2022. The petitioners aver that their non-appearance is neither willful and nor wanton and prays for allowing this application and set aside the *ex parte* order passed against the petitioners on 08.12.2022.

The averments of the respondent in brief:

2. The respondent deny the averments of the petitioners as false in toto and aver that the application has been filed only to prolong the suit and prejudice the respondent and seeks for dismissal of the application with cost.

Point for consideration:

3. Whether this application is liable to be allowed?

Evidence:

4. Neither of the parties to this application has adduced any oral or documentary evidence.

Discussion:

5. This Court, having considered the arguments advanced on both sides and thoroughly examined the pertinent case records, proceeds to delineate its findings by the following discussion. This suit has been instituted for declaration of common right in 'C' schedule to access the 'A' scheduled property and for declaration of sale deed dated 30.05.2020 registered as Doc.No. 2018/2020 as null and void and for perpetual injunction restraining interference to the enjoyment of the common pathway in 'C' schedule property. The petitioners who are the defendants in the suit have filed this application to set aside the *ex parte* order dated 08.12.2022 passed against the petitioners. The reasons assigned by the petitioners are that the petitioners have been employed out of station and were unable to instruct their counsel to file

their written statement. The respondents have resisted these averments as false. A perusal of the case proceedings would show that opportunities were given to the petitioners to file written statement on 26.07.2022, 12.08.2022, 26.08.2022, 13.09.2022, 13.10.2022, 22.11.2022 and finally on 08.12.2022 and the petitioners failed to file their written statement and were set *ex parte* on 08.12.2022. The petitioners have filed this application along with their written statement, however, has filed this application after elapse of 371 days. The petitioners have not adduced any oral or documentary evidence in support of their averments. However, the Honourable Higher Courts, time and again, have insisted to adopt a liberal approach in condoning non-appearance rather than adopting a pedantic view. This Court is also of considered view that fair and sufficient opportunities have to be given to all the parties for effective and conclusive determination of the dispute between the parties. Hence, this Court is inclined to allow this application with cost.

Result:

6. As a result, this application is allowed on condition of payment of cost of Rs. 1,855/-(Rupees One-Thousand Eight-Hundred and Fifty Five only) to the respondent on or before 04.03.2024. Failure of compliance would invite dismissal of the application.

This order was dictated to the steno-typist and transcribed by her on computer and after rectification of mistakes, pronounced by me in open court on this 26th day of February 2024.


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Annexure

Petitioner side evidence

Petitioner side Witnesses: Nil

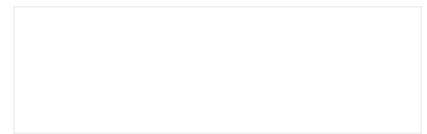
Petitioner side Exhibits: Nil

Respondent side evidence

Respondent side Witnesses: Nil

Respondent side Exhibits: Nil

Court Documents: Nil



District Munsif
Uthangarai