

**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 3rd day of June 2024

I.A.No. 03 of 2022 in O.S.No. 124 of 2013

TNKI13-000055-2013

Chennammal

...Petitioner / Plaintiff

/versus/

1. Senthil
2. Kunjammal
3. Muthammal
4. Ravi Sundharam
5. Vasu @ Vasudevan
6. Santhi
7. mynavathi

...Respondents / Defendants

This interlocutory application came up before this Court on 25.04.2024 for final hearing in the presence of advocate Thiru. S. Moorthi, the learned counsel for the petitioner and advocate Thiru. R. Chandrasekaran, the learned counsel for the respondents 4 and 6 and the respondents 1 to 3 & 5 are set *ex parte* for non-appearance 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 9 of the Code of Civil Procedure, 1908 for setting aside the order of dismissal of the suit dated 04.01.2019.

The averments of the petitioner in brief:

1. The petitioner herein is the plaintiff in the suit instituted for partition and injunction and declaration of certain instruments as void and aver that the same was posted for trial in special list on 04.01.2019. The petitioner avers that the petitioner



was unable to appear before this Court since the petitioner was affected by jaundice and was under taking indigenous medicine in the state of Karnataka and was further unable to meet her counsel. The petitioner avers that when the petitioner met her counsel on 14.09.2019, the petitioner came to know about the fact that the suit was dismissed for default on 04.01.2019 and the non-appearance is neither willful and nor wanton and prays for allowing this application.

The averments of the 4th and 6th respondents in brief:

2. The averments of the petitioner are denied by the respondents in toto. The respondents aver that the suit was posted for special list for trial on 30.11.2018, 05.12.2018, 12.12.2018, 19.12.2018, 03.01.2019 and was finally posted on 04.01.2019 for the appearance of the petitioner and the petitioner's counsel reported no instructions and the suit was dismissed on that regard and the averments of the petitioner that the suit was dismissed on 03.01.2019 is false and that the averments of illness and treatment by indigenous medicine are imaginary. The respondents aver that the petitioner has also not furnished any reason for the delay of 225 days and this application is filed only to harass these respondents and seek for dismissal of the application.

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:

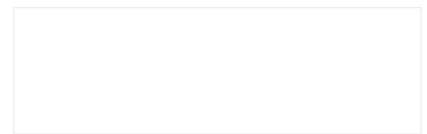
5. This Court, having considered the arguments advanced on both sides and thoroughly examined the pertinent case records, proceeds to delineate its findings by the following discussion. A perusal of the case records would show that the suit was posted for trial in special list on 30.11.2018 and was subsequently adjourned to 30.11.2018, 05.12.2018, 12.12.2018, 19.12.2018, 03.01.2019 and finally to 04.01.2019 when the learned counsel for the petitioner reported no instructions and consequently the suit was dismissed for default. A further perusal of the case records would show that the suit has been instituted for partition and separate possession of the petitioner's share of the suit property and for declaration of the relies deed dated 26.10.2010 registered as Doc.No. 4946/2020 as null and void and for qualified injunction restraining the respondents 1 to 7 from encumbering the suit property. The averments in the plaint would show that the suit property is alleged to be the self acquired property of the petitioners' father-in-law namely Ariya Gounder and was subsequently bequeathed to the name of the petitioner's husband and the 1st respondent's father. The 7th respondent has filed written statement admitting the averments in the plaint and it is the 4th and 6th respondents who are contesting this application. Considering the nature of the suit being partition and that the reasons for the non-appearance is found satisfactory and considering the old age of the petitioner, this Court had condoned the delay of 225 days in filing this application by order dated 22.09.2022 in I.A.No. 01 of 2019 upon payment of cost. Hence, the reasons stated for the non-appearance is found satisfactory and this Court is inclined to allow this application upon payment of cost to usher due diligence.



Result:

6. As a result, this application is allowed on condition of payment of cost of Rs. 1,000/- (Rupees One-Thousand only) to the 4th and 6th respondents on or before 10.06.2024.

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 3rd day of June 2024.



District Munsif
Uthangarai

Annexure

Petitioner side evidence

Petitioner side Witnesses: Nil

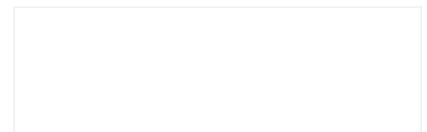
Petitioner side Exhibits: Nil

Respondent side evidence

Respondent side Witnesses: Nil

Respondent side Exhibits: Nil

Court Documents: Nil



District Munsif
Uthangarai