

**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 Tuesday, the 22nd day of October 2024

**I.A.No. 05 of 2024 in O.S.No. 124 of 2013**

TNKI13-000055-2013

1. Muthammal

2. Santhi

...Petitioners / Defendants 3 & 6

/versus/

Chinnammal

...Respondent / Plaintiff

This interlocutory application came up before this Court on 21.10.2024 for final hearing in the presence of advocate Thiru. E. Laksmanan, the learned counsel for the petitioners and advocate Thiru. S. Moorthi, 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 dated 04.12.2014 passed against the petitioner.

***The averments of the petitioner in brief:***

1. The petitioners herein are the 3<sup>rd</sup> and 6<sup>th</sup> defendants in the suit instituted by the respondent for partition and injunction and declaration of certain documents as null and void and the suit was ordered to be heard *ex parte* as against the petitioners due to non-appearance of the petitioners on 04.12.2014 and aver that the 1<sup>st</sup> petitioner was affected by jaundice before the hearing date and he was under taking treatment, and hence, the 1<sup>st</sup> petitioner unable to appear before the Court. The petitioners aver that



the 2<sup>nd</sup> petitioner was out of station and could not appear before the Court, and that the 1<sup>st</sup> petitioner was handling the case. The petitioners aver that when the 1<sup>st</sup> petitioner met his counsel after he got well and then came to know about the *ex parte* order passed against the petitioners. The petitioners aver that the non-appearance of the petitioners is neither willful nor wanton, and hence, the petitioners pray for allowing this application and seek to set aside the *ex parte* order dated 04.12.2014 passed against the petitioner.

***The averments of the respondent in brief:***

2. The respondent denies the averments of the petitioners in toto and avers that the petitioners filed this application after 10 years of *ex parte* order, and hence, this application is filed only to prolong the proceedings and that the application is liable to be dismissed. Hence, the respondent seeks 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. This suit has been instituted for partition and separate possession of the petitioner's share in the suit property and for declaration of the release 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. A perusal of the case proceeding would show that the summonses to the petitioners were duly served and sufficient opportunities were given to the petitioners on 26.11.2013, 07.01.2014, 06.02.2014, 06.03.2014, 15.04.2014, 05.06.2014 to the 1<sup>st</sup> petitioner and on 08.07.2014, 26.08.2014, 09.10.2014, 05.11.2014, 26.11.2014 and finally on 04.12.2014 to both the petitioners to file written statements. However, the petitioners failed to file written statement and were set *ex parte* on 04.12.2014. The petitioners have assigned illness as the reason for non-appearance. The respondent has resisted this application on the ground that the averments are all false and that there is an inordinate delay in filing this application. Though no documentary evidence supporting the averments of the illness has been produced by the petitioners, it appears from the plaint that the respondent has denied title of the petitioners but has admitted to their relationships. Hence, this Court is of considered view that the nature of suit being partition, all parties have to be afforded equal opportunities to present their fullest case which the principles of natural justice warrant. Hence, this Court is inclined to allow this application but upon heavy cost to usher due diligence.

***Result:***

***6. As a result, this application is allowed on condition of payment of cost of Rs. 5,000/- (Rupees Five-Thousand only) to the respondent on or before 29.10.2024.***

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 22nd day of October 2024.

Sd/-  
Thiru. G. Amar Anand, B.A.LL.B (Hons), LL.M.  
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

Sd/-  
Thiru. G. Amar Anand, B.A.LL.B (Hons), LL.M.

District Munsif  
Uthangarai