

**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 Thursday, the 8th day of June 2023

I.A.No. 06 of 2022 in I.A.No. 01 of 2020 in O.S.No. 51 of 2020

TNKI13-000083-2020

1. Aadhimulam
2. Masila
3. Pachiyappan

...Petitioners / Respondents / Defendants

/versus/

1. Palaniyammal
2. Ganesan
3. Chinnakanni
4. Sampath
5. Kasthuri
6. Kala

...Respondents / Petitioners / Plaintiffs

This interlocutory application came up before this Court on 08.06.2023 for final hearing in the presence of advocate Thiru. K. Vadivel, the learned counsel for the petitioners and advocate Thiru. K. Murugan, the learned counsel for the respondents 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 seeking to set aside *ex parte* order dated 09.02.2021 in I.A.No. 01 of 2020.

The averments of the petitioners in brief:

1. The petitioners herein are the defendants in the suit instituted by the respondents for declaration and perpetual injunction and aver that the suit was posted

for filing counter of the petitioners on 09.02.2021. The petitioners aver that the respondents had asked the petitioners to resolve the dispute amicably in witness of village elders, and thereafter, the 1st petitioner became ill, and thereafter, due to COVID – 19 pandemic, the petitioners were unable to instruct their counsel and were unable to appear before this Court. The petitioners aver that the non-appearance of the petitioners is neither willful nor wanton and aver that the petitioners have good defence in the case and pray for allowing this application.

The averments of the respondents in brief:

2. The respondents deny the averments of the petitioners in toto as false. The respondents aver that the averments pleaded by the petitioners are all false and the petitioners have filed this application only to prolong the suit and disturb the respondents. Hence, the respondents 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 heard both sides and perused case records. This suit has been instituted for declaration of title and perpetual injunction against the petitioners by the respondents. The application in I.A.No. 01 of 2020 has been filed seeking temporary injunction. This application has been filed by the defendants to set aside the *ex parte* order dated 09.02.2021 in I.A.No. 01 of 2020. A perusal of the case proceedings would show that sufficient opportunities were given to the petitioners to

file their counter and an *ex parte* order has been passed since the petitioners failed to file their counter. The reasons assigned by the petitioners are that the respondents had called the petitioners to amicably settle the dispute, and thereafter, the 1st petitioner became ill, and thereafter, due to COVID – 19 pandemic, the petitioners were unable to instruct their counsel. The respondents have resisted this application claiming that the averments are all false. The Honourable Higher Courts have, time and again, insisted the trial courts to adopt a liberal and pragmatic approach in condoning non-appearance and to avoid a pedantic approach. The petitioners have filed the counter to application in I.A.No. 01 of 2020 to show their *bonafide* interest in contesting the interlocutory application. Further, this Court takes judicial notice of the extraordinary circumstances prevailing in the year 2021. Hence considering the submissions on both sides, this Court is of considered view that sufficient and reasonable opportunities have to be afforded to both sides which the principles of natural justice warrant. Hence, this Court is inclined to allow this application. Since cost has been already imposed in I.A.No. 04 of 2021, this Court deems it fit to not impose further cost.

Result:

6. As a result, this application is allowed. No cost.

This order was dictated to the typist and transcribed by her on computer and after rectification of mistakes, pronounced by me in open court on this 8th day of June 2023.

District Munsif
Uthangarai

Annexure

Petitioner side evidence

Petitioner side Witnesses: Nil

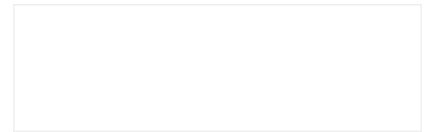
Petitioner side Exhibits: Nil

Respondent side evidence

Respondent side Witnesses: Nil

Respondent side Exhibits: Nil

Court Documents: Nil



District Munsif
Uthangarai