

**IN THE COURT OF THE II ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL.**

Present : Selvi. V. Sivaranjani, B.A., L.L.B.,

II Additional District Munsif, Nagercoil

Tuesday, on the 10th day of June, 2025.

I.A. No.10 of 2024 in O.S. No.1226 of 2004

CNR No.TNKK04-000030-2004

1. Kottar R.C. Diocese – rep. by its

Bishop Most Rt. Dr. Nazarane Soosai

2. Holy Family Church, Carmel Nager

Ramanputhooor, Nagercoil,

Rep. by its Parish Priest

Rev. Fr. J.R. Patrick Xavier

... Petitioners / Plaintiffs

-vs-

1. A. Siluvairayan

2. M. Gnanamoni (died)

3. S. Christudoss

.... Respondents/Defendants

This petition came before this court on 05.06.2025 for a final hearing in the presence of Mr. A. Gnana Sekar, learned counsel for the petitioners / Plaintiffs and 1st and 3rd respondents were set ex parte in this petition and 2nd respondent is died and upon hearing Petitioner side, perusing the case records, and having stood over for consideration till this day, this court hereby delivers the following:

ORDER

The Petitioner had filed the above Petition, under Order IX Rule 9 of Code of Civil Procedure, seeking to pass an order restoring the suit, which was dismissed for default on 16.03.2024 to file and dispose off the same on merits.

Gist of Averments in the Petitioners/Plaintiffs Petition :

2) The Petitioner is the 1st Plaintiff in this suit and the petitioner herein. The 2nd Plaintiff is the Parish Priest of Holy Family Church, Carmel Nagar, Ramanupthoor Nagercoil, petitioner file this affidavit for petitioner and for and on behalf of the 2nd plaintiff. The plaintiffs filed the suit for declaration of Trust Deed is null and void and unenforceable and Permanent injunction against the defendants and it is pending for trial before the II Additional District Munsif Court, Nagercoil. The main suit is for declaration that the Trust deed executed by defendants on 25.11.2022 and registered as Document No.126 of 2003 at Sub – Registry, Parasala is null and void and unenforceable and also not binding on the plaintiffs 1 to 2 and permanent injunction against the defendants. It is humbly submitted that this suit stood posted on 16.03.2024 for trial. On that date, petitioner was called absent and suit is dismissed for default. As a matter of fact on that date, due to ecclesiastical work, petitioner was unable to appear before this court in order to open the trial, hence this court called petitioner and the suit is dismissed for default on 16.03.2024. That the dismissal

order passed against them, it will create unnecessary hardship and irreparable loss will occur. The suit is full of merit and petitioner have got good case. The petitioner hope eventually a decree will be passed in petitioner favour as prayed for. The default is neither willful nor wanton. It has occurred under the above said circumstances, which are beyond petitioner control. Hence, the suit has to be restored to file lest, petitioner will be put to irreparable loss and damages Hence, it is most humbly prayed to this court to pass an order restoring the suit, which was dismissed for default on 16.03.2024, to file and dispose off the same on merits. Hence, the petition is to be allowed.

3) 1st and 3rd respondents were set exparte in this petition.

4) The point for consideration is whether the above petition has to be allowed or not?

5) Point:

Heard. Records perused. The petitioner had filed the above petition under Order IX Rule 9 of the Code of Civil Procedure, seeking an order to restore the suit namely O.S.No.1226/2004, which was dismissed for default on 16.03.2024.

6) The petitioner / 1st plaintiff had stated that the suit is for declaration of Trust deed dated 25.11.2002, document No.126/2003, Sub-Registry Office, Parasala, as null and void and permanent injunction against the Respondents / defendants and the suit posted for trial on 16.03.2024 and on that particular date, the petitioner was unable to appear before this court due to ecclesiastical

work, hence on 16.03.2024, the above suit was dismissed for default.

7) Further, the petitioner filed the above petition on 15.04.2024, restore the suit so far the above petition averments is not denied or disputed, the court finds no reason for disbelieving the case of the petitioner, however, by considering the suit is of the year 2004, this court is of the considered the view that the above petition could be allowed on terms.

In the result, This petition is allowed, on the condition that the petitioners shall pay a sum of Rs.1,000/- (Rupees One Thousand only) payable to the Mediation and Conciliation Centre, Kanniyakumari at Nagercoil on or before 17.06.2025. otherwise, this petition would be dismissed. Call on 17.06.2025.

Dictated to the Steno-Typist, and typed by her directly in the Computer, corrected and pronounced by me, in open court this, the 10th day of June 2025.

II Additional District Munsif,
Nagercoil.

Petitioner side witnesses and documents : Nil.

Respondents side witnesses and documents : Nil.

II Additional District Munsif
Nagercoil.

Draft/Fair Order
I.A.No. 10/2024 in
O.S.No.1226/2004
Date: 10.06.2025.
II ADM Court, Nagercoil.

