

**IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF,
NAGERCOIL.**

Present : Tmt. M.Alima, B.A., L.L.M.,

Principal District Munsif, Nagercoil

Wednesday, on the 9th day of April, 2025.

I.A. No. 11 of 2024 in O.S. No. 301 of 2014

1. Gomathiammal

2. Nagarajan

3. Karuppaswamy

4. Jeyachandran

... Petitioners/Plaintiffs

-vs-

1. Radhakrishnan (died)

2. Chenthilkumar

3. Muthu Ramalingam

4. Chellam Asari (died)

5. Nainar Asari

Addl. 6. Jaya (Died)

Addl. 7. Thanga Asari (Died)

Addl. 8. Radhika

Addl. 9. Sudha

Addl. 10. Chen Thamaraiselvi

(Addl. 6th defendant died L.Rs. are
addl. Defendants 7 to 9. Recorded
as per memo dated 05.09.2024.

Addl. 7th defendant died. Recorded
as per memo order 05.09.2024)

... Respondents / Defendants &
pro. Addl. 10th defendant

This petition came before me on 28.03.2025 for a final hearing in the presence of Thiru. V. Kannan, Advocate for the Petitioners / Plaintiffs and Thiru. C.A. Appathurai, Advocate for the 5th respondent / 5th defendant and Thiru. D. Arulmaran, Advocate for the 2, 3 Respondents / 2, 3 defendants, counter not filed, set exparte and suit against Addl. defendants 6, 7 got abated and suit is dismissed for default against Addl. respondents 8, 9 and Addl. 10th respondent was set exparte and respondents 1, 4 are died and upon hearing both sides and upon perusing the case records and having stood over for consideration, till this day, this Court delivers the following:

ORDER

The petitioners have filed the above petition under Order IX Rule 9 and Section 151 of the Code of Civil Procedure, seeking to set aside the order of the suit dated 20.11.2024 against the additional 10th defendant and restore the suit in the interest of justice.

2) **Gist of Averments in the Petitioners Petition:**

The petitioner is the 2nd plaintiff in the suit. The petitioner was filing this affidavit for petitioner and also on behalf of other plaintiffs. The suit is for partition. The suit was posted on 20.11.2024 to pay summon process to the additional 10th defendant. Since, petitioners wrongly noted the case diary, petitioners are unable to meet our counsel and make necessary arrangement for

that. Since, no steps taken for additional 10th defendant, this court called us and dismiss the suit against the additional 10th defendant. Because of the dismissal of the same petitioners are put into hardship. Therefore, this court to pass orders to set aside order of dismissal of suit against the 10th defendant. Hence, this petition is to be allowed.

3) Gist of the Averments in the 5th Respondent Counter:

The 5th Respondent had filed a counter stating that all the averments contained in the affidavit are false. It is submitted that summons was ordered for additional 10th defendant for appearance on 20.11.2024, the reason stated for non-compliance is highly imaginary. The non-compliance of court order is wanton and deliberate reluctantly the 10th defendant was absent and consequently the suit as against him been dismissed. The petition is not bonafied and hence it is liable to be dismissed. Hence this petition is to be dismissed with cost.

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

5) Point:

Heard both sides. Records perused. This is an application filed by the petitioner to restore the original suit under Order 9 Rule 9 CPC. It is contented by the learned petitioner's counsel that, the suit was posted on 20.11.2024 to pay

summon process to the additional 10th defendant. The petitioners claimed that, the petitioners wrongly noted the case diary, petitioners are unable to meet our counsel and make necessary arrangement for that. Since, no steps taken for additional 10th defendant, this court called us and dismiss the suit against the additional 10th defendant.

6) On the other hand, it is submitted by the respondent's counsel that, the reason stated for non-compliance is highly imaginary. The non-compliance of court order is wanton and deliberate reluctantly the 10th defendant was absent and consequently the suit as against him been dismissed. The petition is not bonafied and hence it is liable to be dismissed. Hence, this application is liable to be dismissed.

7) On considering the both submission and perusal of available material, it is came to the light that, the petitioner filed this suit for partition against the respondents. During the pendency of the suit, it was posted for issues summons to 10th defendant on 20.11.2024 and on the day itself the above said petitioners were not paid batta . Consequently, this court passed dismissal order for default against the 10th defendant on the day itself. Subsequently, the petitioners have filed this application on 27.11.2024 . On perusal of available material, it is learnt that, the petitioners have filed the restore application within the stipulated time. Therefore, the court decided that, the contention of the respondent is devoid of merits. Under the circumstances, they have no merits to

contest the restore application. Hence, for the above said reasons, this petition is allowed with conditional costs.

8) **As a result**, this petition is allowed, on the condition that the petitioner shall pay a sum of Rs.250/- (Rupees Two Hundred and Fifty only) to the 5th Respondent on or before 15.04.2025; otherwise, this petition would be dismissed. Call on 15.04.2025.

Dictated to the Steno-Typist, and typed by her directly in the Computer, corrected and pronounced by me, in open court this, the 9th day of April 2025.

Principal District Munsif
Nagercoil

Petitioners side witnesses and documents : Nil.

Respondents side witnesses and documents : Nil.

Principal District Munsif
Nagercoil.

Fair/ Draft common Order
I.A.No.11 of 2024 in
O.S.No.301 of 20214
Date: 09.04.2025.
PDM, Nagercoil.