

IN THE COURT OF THE SUBORDINATE JUDGE, ERANIEL.,

Present: Thiru .K. Selvapandi, B.A., B.L.,
Subordinate Judge, Eraniel.

Monday, the 21st day of August 2023.

I.A.No. 13 /2023 in OS.No.78/2020

Mohandhas

... Petitioner/4th Defendant

. Vs.

1. Sree Ram
(Minor aged 17 years, dated of birth
04.05.2003 represented by her mother
2nd plaintiff' by name Sreekala)
2. Sree Kala

... Respondents/ Plaintiffs

This petition coming on for final hearing before me on 1.06.2023 in the presence of Thiru. C. Vijaya Kumar, Advocate for the petitioner and of Thiru. S. Sivakumar, Advocate the respondents and upon hearing the arguments of both sides and upon perusing the records and having stood over for my consideration till this day, this court delivered the following:

ORDER

Heard both sides. Perused the records.

2. This is a petition filed by the petitioner/ 4th Defendant seeking to set aside the exparte order passed against him on 08.07.2022.

3. Admittedly the respondents/plaintiffs have filed the main suit against the petitioner and others seeking for partition. On 8.07.2022 the petitioner was decided exparte as he failed to file written statement.

4. Now the petitioner has filed this petition stating that since he was suffered from viral fever, he could not file his written statement and he could not appear on that day.

5. The respondents/plaintiffs resisted the application on the ground that this petition has been filed to drag on the proceedings and that without filing petition to set aside the exparte order passed in I.A.No.2/2020 and I.A.No. 3/2020.

6. This is only the petition to set aside the exparte order. The petitioner was decided exparte on 08.07.2022 for non filing of written statement. Now, this petition has been filed along with written statement. The reason stated by the petitioner is not denied or objected by the respondents. Merely because, set aside petitions are not filed in incidental proceedings, it cannot be stated that exparte order cannot be set aside in main suit.

7. Hence this court is of the view that in the interest of justice and in order to give one more opportunity to the petitioner to contest the suit on merits, this petition can be allowed. No prejudice will be caused to the respondent if the delay in proceedings is compensated by way of cost.

In the result, this petition will be allowed on payment of cost of Rs.1,000/-to be paid by the petitioner to the respondents/plaintiffs on or before 28.08.2023. Call on 30.08.2023.

Dictated by me to the Steno-typist and typed by her in the computer, corrected and pronounced by me in open court, this the 21st day of August 2023.

**Subordinate Judge,
Eraniel.**