

**IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, KULITHALAI****Present : Selvi.A.Yugathymariya, B.Com, L.L.B.(Hons.,)****Additional District Munsif, Kulithalai.****Dated Monday, the 15<sup>th</sup> day of December 2025****O.S No.56/2023 in I.A No.06/2025**

1) Radhamani

2) Selvi

3) Maheswari

4) Mohanapriya

**...Petitioners/Defendants No. 2, 3, 5, 6****- Vs -**

M.Shanmuganathan

**...Respondent/Plaintiff**

This petition has come up before this Court for final hearing on 01.12.2025 in the presence of Mr.D.Rajkumar, the Learned Counsel appearing for the petitioners and in the presence of Mr.P.Chandran, the Learned Counsel appearing for the Respondent and upon perusal of material records and having stood over for consideration till this day, this court delivers the following:

**ORDER**

This petition is filed by the Petitioners/Defendants No. 2, 3, 5 and 6 under Order 9, Rule 7 r/w Section 151 of CPC in order to set aside the exparte order passed against them in the above suit dated 06.07.2023.

**Brief averments in the affidavit:**

2) The Petitioners are the Defendants No.2, 3, 5 and 6 in the above suit. The above suit has been filed by the Respondents/Plaintiffs against the Petitioners and others for the relief of declaration and Permanent Injunction. The above suit was posted on 06.07.2023 for appearance of the Petitioners. Upon receipt of the

summons from this Court in the main suit, the Petitioners have engaged a counsel namely Mr.M.C.Sivakumar, Advocate, Erode.

3) The Counsel for the Petitioners promised to keep them informed about the progress of the above suit. Unfortunately, the Petitioners' Counsel kept them in dark and even on occasions when the Petitioners made enquiry, he kept giving them dates and adjournments. The Petitioners have reasonably and fairly believed that the case which was filed against them is still pending and their counsel will inform them.

4) After the death of their counsel Mr.M.C.Sivakumar, the Petitioners have come to know about that this Court has passed an exparte order against the Petitioners on 06.07.2023. Now, the Petitioners have engaged the present counsel and have given a fresh vakalath to him. If the exparte order dated 06.07.2023 is not set aside and an opportunity is not provided to contest the case to the Petitioners, the Petitioners will be put to irreparable loss and hardships. It is therefore just and necessary to set aside the exparte order passed by this Court dated 06.07.2023. Hence, this petition.

**Brief averments in the counter filed by the Respondents:**

5) The Petitioners/Defendants No. 2, 3, 5 and 6 were called absent and they set exparte on 06.07.2023 for non filing of written statement. Before 06.07.2023, the summons were served to the Petitioners. But, on the above said date, they were called absent and hence, they were exparte due to non filing of written statement. The Petitioners are prolonged absentees to the above suit. They had failed to file written statement within 30 days as per Order 8, Rule 1 of CPC from the date of receiving summons from the Court.

6) Thereafter, the Petitioners are legally obliged to file the exparte set aside petition under Order 9, Rule 7 of CPC along with written statement within 30 days. But the Petitioners have filed this petition only on 06.11.2025. This petition is legally

not tenable as there is no plausible explanation and coherent reason that explains the delay caused in filing of the written statement. The Petitioners must have filed the written statement within the extended period of time of not more than 120 days, from the date of service of summons and thereafter upon the extension of this period, they will forfeit their right to file their written statement and the Court shall not allow same to be taken on record.

7) The Petitioners have jointly filed with the written statement along with counter claim. The counter claim raised by them is against the 1<sup>st</sup> Defendant/Co-defendant. According to the law, the counter claim is known to be cross suit between the Defendants and the Plaintiff but not between the Defendants. Hence, written statement filed by the Petitioners along with counter claim as against the 1<sup>st</sup> Defendant/Co-Defendant is legally not maintainable under Order 8, Rule 1 and Rule 6A of CPC.

8) The time limit for filing counter claim is same as that of time limit prescribed for filing written statement. Hence, the Petitioners have legally lost their entire right to file written statement along with counter claim. They have been legally barred. This is not a correct point of time to file the written statement along with the counter claim. The Petitioners have exhausted their window period. The written statement filed along with counter claim by the Petitioners against the 1<sup>st</sup> Defendant/Co-Defendant could have been excluded in terms of Order 8, Rule 6C of CPC. This petition has been filed by the Petitioners at such belated stage and it cannot be legally looked into. It amounts to pave the way for raising the question of law. The Petitioners are not entitled to reinstate in the above suit. Hence, the written statement along with counter claim by the Petitioners has to be rejected and this petition is liable to be dismissed with costs.

**Point for consideration:**

9) Whether the exparte order passed against the Petitioners by this Court in the above suit is liable to be set aside or not?

**Evidence:**

10) There is no oral and documentary evidence adduced on either side.

**Discussion:**

11) Heard both sides. Perused records. Upon perusal of records, it is seen clear that the above suit has been filed by the Plaintiff/Respondent herein against the Petitioners/Defendants No. 2, 3, 5 and 6 and others for the relief of declaration of title in respect of the suit property and for the consequential relief of Permanent Injunction. Upon perusal of records, it is seen clear that summons were served to the Defendants No. 2 to 6 in the above suit on 05.06.2023 itself. On the above said date, the Defendants No. 2 to 6 were called absent and there was no representation on behalf of them. Despite the same, this Court has posted the next hearing of this suit on 06.07.2023. On 06.07.2023 also, the Defendants No.2 to 6 were called absent and no representation for them. Hence, this Court has passed an exparte order against the Defendants No. 2 to 6 in the above suit and adjourned the above suit.

12) This apart, it is also seen that after framing of issues in the above suit, on the side of the Plaintiff, the Plaintiff was examined as PW1 and Ex.A1 to Ex.A16 were marked through him during his chief examination and subsequently, the above suit was posted for cross examination of PW1. Thereafter, PW1 was cross examined in part on the side of the 1<sup>st</sup> Defendant and the above suit was posted for cross continuation of PW1. Pending the stage, this petition has been filed by the Petitioners/Defendants No. 2, 3, 5 and 6 praying this Court to set aside the exparte order passed by this Court against the Petitioners dated 06.07.2023.

**13)** It is the case of the Petitioners that on 06.07.2023 when the above suit was posted for their appearance, they upon receipt of summons from this Court in the main suit, have engaged a counsel namely M.C.Sivakumar, Advocate, Erode and when enquired with their counsels about the progress of the above suit, their counsel kept them in dark and had also given them dates and adjournments. It was also contended on the side of the Petitioners that the Petitioners have reasonably and fairly believed that the above suit against them is still pending and their counsel will inform them. They also alleged that after the death of their counsel Mr.M.C.Sivakumar, they have come to know about the exparte order passed by this Court and have presently engaged a new counsel, have given a fresh vakalath to him and had filed this petition to set aside the above said exparte order.

**14)** Per contra, the major objections that has been raised on the side of the Respondent/Plaintiff is that the Petitioners have failed to file the written statement within a period of 30 days as mandated under Order 8, Rule 1 of CPC from the date of receiving summons from the Court. Yet another objection that has been raised on the side of the Respondent is that the Petitioners have jointly filed the written statement along with counter claim against the 1<sup>st</sup> Defendant, who is a Co-Defendant in the above suit. The Respondents also contended that according to the law, counter claim is known to be a cross suit between the Defendant and the Plaintiff but not between the Defendants and hence, the written statement filed by the Petitioners along with counter claim against the 1<sup>st</sup> Defendant is legally not maintainable under Order 8, Rule 1 and Rule 6A of CPC. The Respondent has also alleged that this petition has been filed by the Petitioner at a very belated stage and for the above reasons the Respondent has sought this Court to reject the written statement along with the counter claim and dismiss this petition with costs.

**15)** Upon careful perusal of records and submission made on both sides, it is seen clear that the Petitioners/Defendants No. 2, 3, 5 and 6 have alleged that they have engaged a counsel namely Mr.M.C.Sivakumar after receiving summons from this

Court and thereafter, they also alleged that their counsel had promised them to inform about the progress of the above suit but he failed to do the same. The Petitioners have also alleged that only after the death of their counsel Mr.M.C.Sivakumar, they have come to know about the exparte order passed against them by this Court on 06.07.2023. However, upon perusal of the case records, it is nowhere seen that no such Advocate has filed vakalath for the Petitioners/Defendants No. 2, 3, 5 and 6 in the above suit.

**16)** Summons were duly served upon the petitioners in the above suit and when the Petitioners were called by this Court after serving of summons, they were called absent. No representation for them and hence, they were set exparte by this Court on 06.07.2023.

**17)** Upon perusal of the Counter claim without going into the merits of the same, on face on record, it is seen clear that the Petitioners/Defendants No. 2, 3, ,5 and 6 in the above suit, have filed their written statement along with counter claim against the 1<sup>st</sup> Defendant, who is a co-defendant in the above suit, for the relief of declaration of the Settlement Deed dated 09.09.2009 executed by one Andiyappan in favour of the 1<sup>st</sup> Defendant as null and void and for the said relief, the Petitioners have also calculated and paid the court fee under section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act by valuing the said relief and paid the Court Fees for the same. As rightly pointed out by the learned counsel for the Respondent, it is a settled position of law that a counter claim is not sustainable as against a co-defendant and the same has to be claimed by the Defendant only against the Plaintiff.

**18)** The provision contained under Order 8, Rule 6A of CPC has also been specifically provided that a Defendant may, in a suit set up by way of counter claim against the claim of the Plaintiff, any right or claim in respect of the cause of action accruing to the Defendant against the Plaintiff either before or after the filing of the

suit but before the Defendant has stated his defence or before the time limited for delivering his defence has expired, whether such counter claim is in the nature of the claim for damages or not. It has also been specifically stated therein that such counter claim shall have the same effect as a cross suit and the counter claim shall be treated as a plaint and governed by the rules applicable to the Plaints.

**19)** Hence, from the bare perusal of the reading of the above provision itself would enlighten that a counter claim has to be filed by the Defendant only as against a Plaintiff and the same cannot be maintainable as against the co-defendants. If at all the Petitioners/Defendants No. 2, 3, 5 and 6 are having a right to sue against the 1<sup>st</sup> Defendant for certain relieves, they can very well file a separate suit in respect of the same against the 1<sup>st</sup> Defendant and the same cannot be entertained by this Court by way of allowing counter claim being filed against a co-defendant by another defendant.

**20)** Secondly, it is significant to rely upon the provision contained under Order 9, Rule 7 of CPC. It has been specifically stated therein that if the defendant at or before such hearing when the Court has adjourned the hearing of the suit *exparte*, appears and assigns good cause of his previous non appearance, he may upon such terms as the Court directs be heard in answer to the suit, as if he had appeared on the day fixed for his appearance. Therefore, it is seen clear that if the Defendant appears before this Court and assigns good cause for his previous non-appearance, the Court can very well set aside the *exparte* order passed against such Defendant on such terms and costs as it deems fit. However, the term 'good cause' has not been defined anywhere in the Code. However, the Courts shall construe the term 'good cause' in a liberal way in order to render complete justice to the parties, rather than allowing them to defeat on their weakness or on such technical irregularities without being contesting the entire case which has been launched against them by the Plaintiff.

**21)** Upon considering the scope of the above provisions contained under law and applying it to the present case on hand, it is seen that on 06.07.2023 itself summons were served to the Petitioners in the above suit and they were called absent and set *exparte* by this Court for their non-appearance. The reasons stated by the petitioners in this petition that they have engaged a counsel and he had failed to inform with the petitioners about the progress of the above case and only after the death of the above counsel, the Petitioners have come to know about that the suit has been set *exparte* against the Petitioners, are all found to be acceptable and found as a good cause for this Court. However, this petition to set aside the *exparte* order passed against the Petitioners in the above suit has been filed with a long delay of about more than a couple of years. It is also to be pointed out here that there is no provision contained under the Limitation Act, 1963 which prescribes the time period for filing a petition to set aside an *exparte* order passed in a suit. It is also a settled position of law that when an *exparte* order has been passed by a Court of law, the said *exparte* order can be set aside by the Court at any time on an application made by the parties at any time before pronouncing the judgment in a suit. Therefore, this Court is of the considered opinion that a separate petition to condone the delay in setting aside the *exparte* order is not necessary.

**22)** Though the reasons stated by the Petitioners for the delay caused in filing this petition is found to be acceptable by this Court, such huge delay resulted in inconveniences to the Respondent/Plaintiff as the trial of the above suit has commenced and now the above suit has been posted for cross continuation of PW1. Therefore, to balance the equities and to overcome such inconveniences caused to the Respondent/Plaintiff in the above suit due to the delay caused by the Petitioners herein for not filing this petition at an earlier point of time this Court deems it fit to impose costs on the petitioners as a condition for allowing this petition. At the same time, this Court is also of the considered view that as this Court has found that the Petitioners being the Defendants No. 2, 3, 5 and 6 cannot file a counter claim against

a co-defendant, who is the 1<sup>st</sup> Defendant in the above suit, the written statement filed by the Petitioners herein along with the counter claim against the 1<sup>st</sup> Defendant in the above suit is hereby returned. At the same time, this Court finds it just and to meet out the ends of justice to give sufficient time to the Petitioners herein to file proper written statement within the time to be specified by this Court. Therefore, in the interest of justice, to overcome such technical irregularities, this Court is inclined to allow this petition with certain conditions.

**Result:**

In the result, with the above observations, this petition is allowed with the following conditions:

1) The Petitioners are hereby directed to pay a costs of Rs.500/- to the Respondent on or before 06.01.2026.

2) The written statement filed by the Petitioners along with the counter claim against the 1<sup>st</sup> Defendant is hereby returned. The Petitioners shall file their written statement in the above suit on or before 06.01.2026.

3) Failure of any of the above two conditions would result in automatic vacation of the order passed by this Court in this petition.

Dictated to my steno-typist, taken down by her in short hand and typed by her in the computer, corrected by me and pronounced by me in the open court on this the 15<sup>th</sup> day of December 2025.

**Additional District Munsif,  
Kulithalai.**

Petitioners side witness and document - Nil.

Respondent side witness and documents - Nil.

**Additional District Munsif,  
Kulithalai.**