

**IN THE COURT OF THE SUBORDINATE JUDGE, MELUR.**

**Present: Tmt. M. SAMUNDEESWARI PRABHA, M.A., M.L.,**

Monday, the 2<sup>nd</sup> day of June 2025

**I.A.No.10/2024**

**in**

**I.A.No.4/2022**

**in**

**O.S.No.93/2022**

R.Krishnan @ Krisnamoorthy

..... Petitioner/ Petitioner/1st defendant

// Vs //

Tmt.R.Sumathi

..... Respondent/Respondent/Plaintiff

This petition coming up for final hearing before me on 03.04.2025 in the presence of Advocate.Mr.A.Saba Balamurugan, Advocate for the Petitioner and Advocate Mr.A.Satharkhan, Advocate for the respondent and upon hearing the enquiry on both sides, on perusal of the records and having stood over for consideration till this day, this court delivers the following:-

## Orders

This petition has been filed Under Order 9 Rule 9 and Section 151 pass an order by the petitioner/1st defendant/husband as against the respondent/plaintiff/wife to restore the rejection of plaint application which has been dismissed for default on 02.01.2024.

### 1. Brief averments of the petition :-

The petitioner herein is the 1<sup>st</sup> defendant in the original suit. Since the original case was filed before the cause of action arose, he had filed an IA.No.4/2022 seeking relief to dismiss this case, which was devoid of substantive rights, with maximum costs. The respondent filed a counter affidavit in this petition, and the petitioner was unable to appear in person during the subsequent hearing on the petition. Therefore, on 02.01.2024, the above petition was dismissed for default due to the non appearance of the petitioner. The petitioner prays to restore the rejection of plaint application which has been dismissed for default on 02.01.2024. Hence this petition has to be allowed.

### 2. Brief averments of the counter affidavit filed by the Respondent/Respondent/Plaintiff :-

(I) The respondent herein is the plaintiff in the original suit. The Respondent/ Plaintiff here in deny all the allegation stated in the petition except that those are specifically admitted herein. That this petition is not maintainable by law, liable to dismiss. This above petition was not filed within the limitation period. No condone delay petition was filed". The suit properties originally belongs to the Respondent/Plaintiff father in law family namely (Late) Ramasamy

lyer. Thereafter the suit property is devolves to the Respondent/Plaintiff husband (Petitioner/1st Defendant) in the manner of partition made by the Respondent / Plaintiff father in law in the year of 1972, Documents number 2355 and further in the year 1987, Document number 2288.

(ii) The suit property is agricultural land property and the Petitioner / 1<sup>st</sup> Defendant and wife Respondent / Plaintiff was enjoying the suit property and in peaceful position. That the marriage between the Petitioner / 1<sup>st</sup> Defendant and the Respondent /Plaintiff was solemnized in the year 1976 and further Two Sons were born between the Respondent / Plaintiff and Petitioner / 1st Defendant. The first son died in the tender age and the 2<sup>nd</sup> Defendant alone is now the legal heir of the Respondent / Plaintiff and Petitioner /1st Defendant. In the year 1992 the Petitioner / 1<sup>st</sup> Defendant filed against the Respondent / Plaintiff FCOP NO: 1151 of 1992 before the Hon'ble 2nd Additional Family court, Madras praying Divorce. The above petition was dismissed for default by the Hon'ble 2<sup>nd</sup> Additional Family court. The Respondent / Plaintiff filed against the Petitioner/1st Defendant Maintenance Petition in M.C.No. 295 of 1992 before the Hon'ble 2nd Additional Family court, Madras. Hereafter the Petitioner / 1st Defendant and the Respondent / Plaintiff reunion and started living together.

(iii) In the year 2017 the Petitioner / 1st Defendant (R.Krishnan @R.Krishna Moorthy) met with an accident in the Head injury and heavy blood loss from head, subsequently he was admitted Government Hospital, Dharmapuri by the help of the Respondent / Plaintiff and

then the Respondent / Plaintiff took him from Government Hospital recommended to forward to National Institute of Mental Health and Neuro Science Hosur Road, Bangalore. The Petitioner / 1st Defendant was taken treatment in different hospital and also got Eye operation and Eye treatment ( due to head injury) in Agrwal Eye hospital(Annexure enclosed). All the nursing work done by the Respondent/Plaintiff more than 1½ years and spend extreme money and hopeful care services done for Petitioner/1st Defendant treatment. The Respondent / Plaintiff totally took care of the Petitioner/1st Defendant both physical and mentally. The Respondent / plaintiff further submit that taking the advantage of the Petitioner / 1st Defendant mentally illness the relative of the Petitioner / 1st Defendant are trying to cheat and fraudulent documents with respect of Petitioner / 1st Defendant properties. The Petitioner / 1st Defendant relatives was made of (Respondent/plaintiff) husband to separation from wife. She is the wife of the Petitioner/1st Defendant and legally entitle for 1/3 share of the said suit property. Petitioner herein was suffering from mental infirmity and mental illness. Further the respondent have filed all medical report and medical certificates with respect of the physical condition of the Petitioner herein it shows clearly that he is of unsound mind.

(iv) This court also put questions to Petitioner/1st Defendant when he appeared for first time dated 26.09.2022 in which the Petitioner/ 1st Defendant was answered not properly, he contradicted himself back and forth. No application of mind with respected of Petitioner/ 1st Defendant for example this court put questions to the 1st Defendant.

(v) The Respondent / plaintiff herein through his son sending money to Petitioner/ 1<sup>st</sup> Defendant now and then the proof of the counter file payable in the bank is annexure. Further the respondent have spent all her money and all her jewels and her life for the welfare of the Petitioner/ 1st Defendant to recover and for the treatment in the hospital when the Petitioner/1st Defendant accident. Hence this petition has to be dismissed. No costs.

### **3. The point for consideration aroused is that :-**

**Whether the petition has to be allowed or not ?**

### **4. Point :-**

This application has been filed by the 1<sup>st</sup> defendant/husband as against the plaintiff/wife to restore the rejection of plaint application which has been dismissed for default on 02.01.2024. On perusal of records, the petitioner has filed the rejection of plaint application on the ground of no cause of action and a premature suit saying that the wife filed the suit for partition of 1/3 share in the ancestral property is not maintainable.

The case has been posted for enquiry on 18.10.2022 till 02.01.2024 and finally dismissed IA.4-2022 on 02.01.2024 for default.

Moreover the delay on the part of the 1<sup>st</sup> defendant is inorbitant and the ground of rejecting the plaint is no cause of action.

The ground of "no cause of action" will be decided only after the completion of trial. The prolonged delay in conducting the enquiry in IA.4/2022 is very huge and inordinate and that cannot be excused. Hence each and every delay causes much hindrance in disposing the

main suit. Hence the petition is devoid of merits and causes much prejudice to the plaintiff/respondent.

**5. Result:-**

*In the result, this petition is dismissed. No costs.*

Written to the Steno Typist by me, and typed by her directly, corrected and pronounced by me in open court, this the 2<sup>nd</sup> day of June 2025.

**Sub Judge,  
Melur.**

**Petitioner and Respondents both sides witness and documents : Nil**

**Sub Judge,  
Melur.**

**Draft/Fair Order  
in  
IA.No.10/2024  
in  
IA.No.4/2022  
O.S.No.93/2022  
Dt : 02.06.2025  
Sub Court, Melur**