

IN THE COURT OF THE SUBORDINATE JUDGE, MELUR.

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

Wednesday, the 19th day of August 2026

I.A.No.13/2026

in

O.S.No.361/2021

1. N.Sankar
2. T.Sekar
3. T.Kannan (died)
4. K.Hariharan
5. K.Ramki
6. K.Lakshmi Narayanan
7. Seethalakshmi
8. Vaishali

..... Petitioners/ Defendants

// Vs //

P.Devadoss Respondent/Plaintiff

This petition coming up for final hearing before this court on 13.07.2026 in the presence of Advocate.Mr.P.Suresh Kumar, Advocate for the petitioners and Advocate.Mr.S.Vijayakumar, Advocate for the

respondent and upon hearing the enquiry on both sides and 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 7 and Section 151 of CPC pass an order to set aside the exparte order passed on 10.03.2026.

1. Brief averments of the petition :-

(I) The 1st petitioner herein is the 1st defendant in the main suit. The 1st petitioner have filed the petition for himself and also on behalf of the other petitioners. The original suit has been filed by the respondent for declaration and mandatory injunction as against the defendants. In that situation, on 10.03.2026, there was an opportunity to cross-examine of PW1. During the above period, due to the change in weather conditions and rainfall, he has been suffering from viral fever, headache, cough and cold and had been unwell for a week. Also, since he was in contact with his lawyer regarding the above case, he was unable to provide the documents and additional details required for the cross-examination of PW1 on 15.10.2025. The petitioner was unable to cross-examine PW1 and he was unable to contact his lawyer due to ill health and did not

provide documents. The petitioner have filed separate petitions IA.No.10/2025 and IA.No.11/2025 seeking to set aside the ex parte order passed against the petitioner and to recall PW1 for cross-examination and this petition was allowed before this court on 16.02.2026.

(ii) In that situation, on 10.03.2026, the junior advocate who was conducting his case appeared in the case on his behalf in the morning and said that a senior advocate from Madurai was coming to cross-examine of the petitioner's side. Also, on that day, the mother-in-law of his junior advocate died at the Velammal Hospital in Madurai at around 1.00 pm without any treatment, so his junior advocate went there. The petitioner have now come to know that the court, on the other hand, did not cross-examine the petitioners before the senior counsel on his side arrived from Madurai to cross-examine the PW1 on that day. This court, on his part, made the petitioner and the other parties and issued an ex parte order against us, and after completing the examination of the PW1, it has adjourned the original case for judgment on 27.04.2026. The above incident did not happen intentionally. The petitioners' prays pass an order to set aside the ex parte order passed on 10.03.2026. Hence this petition has to be allowed.

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

(I) The respondent herein is the plaintiff in the original suit. The suit property belongs to the respondent. The petitioners/defendants have illegally occupied the suit property and have built a temple pedestal and steps on the suit property. The respondent has been filed an original suit in this court against these petitioners/defendants for declaration and mandatory injunction and for other relief. IA.No.9/2024 on the filing of the petition for appointment of a Commissioner, the Advocate Commissioner was appointed. The Advocate Commissioner, with the help of the surveyor, inspected the property and found out the details of the occupation of the property by the petitioners. The Commissioner has filed the Court Commissioner's Report along with the surveyor's map in this Court.

(ii) Thereafter, the petitioners/defendants delayed the case by saying that they could hold peace talks. On 22.07.2025, the respondent appeared in this court and filed affidavit, the examination of the plaintiff was completed and an appointment was made on 25.08.2025 for the cross-examination of the defendants. The petitioners / defendants

requested to refer the matter to the Lok Adalat, and the defendants requested that this court on 25.08.2025 order that PW1 present. This matter has been referred to Lok Adalath. For reporting settlement. On 16.09.2025, this court ordered "For PW1 present Defendant side prays time. No settlement reported. PW1 cross call on 25.09.2025." On 25.09.2025, PW1 was present in this court. Defendant not ready for cross. Hence PW1 cross or further orders call on 15.10.2025.

(iii) On 15.10.2025, this court ordered that "PW1 present Defendant called absent. No representation. PW1 cross not done till date. Hence D1, D2, D4 to D8 set exparte. PW1 chief treated as Exparte evidence. Hence posted for Judgment (Exparte)". The reason has been stated. Thereafter, the petitioners filed IA.No.10/2025, IA.No.11/2025, IA.No.12/2025 in this court, the above petitions were allowed before this court on 27.02.2026 and the opportunity arose for the cross-examination of PW1. On 27.02.2026, this court hearing that PW1-cross call on 10.03.2026. 10.03.2026 PW1 present. Defendant side no representation. Defendant side pass over this matter, but not ready for cross. Hence defendants set exparte. PW1 chief treated as exparte evidence. Posted for Exparte Judgment call on 07.04.2026. This is the

second petition filed by the petitioners seeking to set aside the exparte order.

(iv) None of the petitioners have stated in their affidavit why they did not appear in court on 10.03.2026 and no reason has been given for the same. Further, the petitioners have stated that they came to know about the fact that the respondents had become ex-parties on 10.03.2026 only on 09.04.2026 (now they have come to know about it). From this it is confirmed that none of the petitioners appeared in court on 10.03.2026. The petitioners have not filed any documents in court to prove the facts stated in the affidavit. The respondents have not filed any records in court to prove that the suit property was transferred to the respondents. Despite giving sufficient time to these petitioners/defendants, they have not come forward to cross examine the respondent. Hence this petition has to be allowed.

3. The point for consideration aroused is that :-

Whether the petition has to be allowed or not ?

4. Point :-

4.1 Both sides heard. This petition has been filed to set aside the exparte order passed as against the petitioner on 10.03.2026.

4.2 In fact this is for the 2nd time, the petitioner have filed the petition to set aside exparte order. Previously on 15.10.2025 the petitioners were set exparte and again IA.No.10/2025, IA.No.11/2025 and IA.No.12/2025 filed and allowed on cost. Hence the petitioners are in the habit of remaining exparte and used to file applications one after the other.

5. Result:-

In the result, in order to give them an opportunity this court inclines to pass the conditional order that the petitioner has to pay cost of Rs.2000/- to the respondent on or before 31.08.2026 and to recall PW1 for cross within 2 weeks. Failing which this petition stands dismissed. For payment of cost of Rs.2000/-.

Dictated to the Steno Typist by me, and typed by her directly, corrected and pronounced by me in open court, this the 19th day of August 2026.

**Sub Judge,
Melur.**

Both sides of witness and documents : Nil

**Sub Judge,
Melur.**

**Draft/Fair Order
in
IA.No.13/2026
in
O.S.No.361/2021
Date : 19.08.2026
Sub Court,
Melur.**