

**I.A.No.12/2025**  
**in**  
**O.S.No.2/2023**

**D.D.17.03.2025.**

Order Pronounced.

This application is filed to set aside the ex parte decree passed against the petitioner/2<sup>nd</sup> defendant on 31.10.1996.

2. The petitioner/2<sup>nd</sup> defendant contended in the petition that the suit is for partition "B" schedule property was in his possession and the 1<sup>st</sup> defendant was also conducting the case on behalf of him and the 1<sup>st</sup> defendant has entered into a sale deed with him and the defendants 3 to 5 with respect to the house among the properties found in the suit properties and thereafter the plaintiff filed final decree petition in respect of the suit properties. Since the 1<sup>st</sup> defendant received signature from him stating that he will be filing a petition to set aside ex parte decree with section 5 petition and therefore, he was not filed separate petition and after the death of 1<sup>st</sup> defendant, the 6<sup>th</sup> to 9<sup>th</sup> defendants

joined the plaintiff and they entered into a compromise out of court and thereafter the plaintiff withdraw the suit and when his Counsel reviewed the case, he came to know that the 1<sup>st</sup> defendant had not included him in the petition. He got a good case and he is also a sharer to the suit property. If the 6 to 9 defendants join the plaintiff and withdraw the case, the petitioner will not get the share in the suit property and there will be a situation where a separate suit will have to be filed which would cause great loss and hardship to the petitioner. The respondent/plaintiff filed counter stating that this petition filed only to drag on the proceedings and there is no serious objection made in the counter. The suit is filed for partition. The petitioner/2<sup>nd</sup> defendant has also filed counter claim along with this petition. This Court is of the considered view that denial of the permission to the petitioner to put forth his pleadings more specifically may cause prejudice to him.

Therefore, this Court is of the view that this petition can be allowed on terms.

3. In the result, this petition is allowed and the petitioner/2<sup>nd</sup> defendant is directed to pay a sum of Rs.1000/- to the respondent/plaintiff on or before 19.03.2025. Failing which the petition shall be dismissed. Call on 20.03.2025.

Principal District Judge,  
Perambalur.