

**In the Court of District Munsif, Mudukulathur**

**Present : Ms.J.C.Aparna, B.A, L.L.B.,**

**District Munsif,**

**Mudukulathur.**

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

**I.A.No.1/2025**

**in**

**O.S.No.5/2016**

Nagavalli

..... Petitioner/4<sup>th</sup> defendant

*/VS/*

1. Mayalagu (Died)
2. Pitchaiammal
3. Pandi
4. Mathialagu
5. Nagarathinam

..... Respondents/Plaintiffs

This petition came on 22.04.2025 before this court for a final hearing in the presence of Thiru.K.Alagarsamy, Learned Counsel for the petitioners/defendants and Thiru.S.Chandrasekaran, Learned Counsel for the respondents/plaintiffs and upon hearing both sides arguments and upon perusing the material records and having stood over till this day for consideration, this court delivered the following:

**ORDER**

This petition has been filed to set aside the exparte order dated 06.02.2025 passed in O.S.No.5/2016 against the petitioners/ defendants.

**2. The contention of the Petitioners/defendants in brief:-**

It is submitted that the petitioner herein is the 4<sup>th</sup> defendant in the suit. The plaintiffs/respondents had filed the suit for the relief of declaration, permanent

injunction and recovery of possession. When the suit was posted for cross examination of DW1, the petitioner/4<sup>th</sup> defendant on 06.02.2025, the petitioner/4<sup>th</sup> defendant was ill and he was not in a position to move about to appear before the court for cross examination. Hence for his non appearance for cross by the plaintiff, the suit was set exparte. The reason for non appearance is neither willful or wanton. Under such circumstances unless exparte order is set aside he will be put to irreparable loss and hardship. Hence prayed to allow the petition.

### **3. Brief averments of the Respondents/plaintiffs in brief:**

It is submitted that, the petitioner had willfully just to drag on the case has not appeared before the court after giving sufficient opportunities. It is also stated that the petitioner/4<sup>th</sup> defendant was present on 06.02.2025 and was willfully absent on the evening and the case was set exparte. The reasons stated by the petitioners/4<sup>th</sup> defendant in the affidavit are all false. It is submitted that the petitioner/4<sup>th</sup> defendant has filed this petition belatedly and without giving any proper reasons for delay and there is no merits in this petition. Hence the petition is liable to be dismissed.

### **4. Point for consideration:-**

Whether the exparte order dated 06.02.2025 passed in O.S.No.5/2016 is liable to be set aside?

No documents filed on either side. Heard both sides.

### **5. Answer to the Point:-**

5.1. Heard the rival contentions put forth by both side counsels. Perused the materials available before this court. The learned counsel appearing for the petitioners/defendants contended that, the petitioner/4<sup>th</sup> defendant has not wantonly refrained from appearing before the court for cross examination,

because of his ill health alone he was not in a position to appear before this court. Upon considering the facts and circumstances of this case, this court is satisfied that the petitioner was prevented by sufficient cause for non appearance.

5.2. The respondents/plaintiffs state that the petition was filed belatedly but on perusal, it is seen that the petition was presented to the court within the time frame but was returned to rectify the defects in the petition and was represented within time. It is well settled position of law that liberal view has to be construed while adjudicating this kind of petitions, therefore this court is of the considered view that, fair opportunity to be given the petitioner to appear and offer himself to be cross examined to decide the case on merits by setting aside the exparte order dated 06.02.2025 in O.S.No.5/2016. However, for the hardship caused to the respondents/plaintiffs this court is inclined to allow the petition only on a condition of payment of cost of Rs.1,000/- to be paid by the petitioner/4<sup>th</sup> defendant to the respondents/plaintiffs on or before 05.06.2025.

Directly typed by me in my official laptop and formatted by Steno Typist, corrected and pronounced by me in open court on this 2<sup>nd</sup> day of June 2025.

**District Munsif,  
Mudukulathur.**

**Both sides witnesses and documents : Nil**

**District Munsif,  
Mudukulathur.**

