

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

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

**District Munsif,**

**Mudukulathur.**

**Wednesday the 11<sup>th</sup> day of June 2025**

**I.A.No.2/2025**

**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 09.06.2025 before this court for a final hearing in the presence of Thiru.K.Alagarsamy, Learned Counsel for the petitioner/4<sup>th</sup> defendant, 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 under Section 151 of Civil Procedure Code to reopen the defendants side evidence.

**2. The contention of the Petitioner/4<sup>th</sup> 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, the petitioner/4<sup>th</sup> defendant (DW1) on 06.02.2025, due to his ill health 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 defendants' absence on the mentioned date was neither intentional nor deliberate. Hence it is submitted that adducing evidence is crucial for the defendants to establish their case. Hence, prays to reopen the case.

### **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. Even though the respondents were ready to cross examine the petitioner. 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 petition be allowed and the relief be granted as prayed for?

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 and the conduct of the petitioner filing this petition within the prescribed period, shows that he

was not grossly negligent. Hence, 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 reopening the case for defendants side evidence for the reasons stated in the affidavit. However, for not promptly proceeding with the case by non appearing for the cross examination after affording sufficient opportunities, this court is inclined to allow this petition as follows,

In the result, this petition is allowed on the condition that the petitioner/ 4<sup>th</sup> defendant shall pay a cost of Rs.500/- to the respondents on or before 19.06.2025 and shall present himself for cross examination on 19.06.2025 without fail. Since the respondents have also mentioned in their counter that they were ready to cross examine the DW1 on 06.02.2025, they shall also cross examine the DW1 on 19.06.2025 without fail. Failing which this petition shall stand dismissed.

Dictated by me to the Steno Typist, corrected and pronounced by me in open court on this 11<sup>th</sup> day of June 2025.

**District Munsif,  
Mudukulathur.**

**Both sides witnesses and documents : Nil**

**District Munsif,  
Mudukulathur.**

