

IN THE COURT OF THE III ADDITIONAL DISTRICT JUDGE, SALEM.

**Present : Tmt. L. Kalaivani, B.A.,B.L.,
III Additional District Judge,
Salem.**

Thursday, the 24th day of April 2025

**I.A.No.1/2025
in
O.S.No.51/2023**

1. Kandhan		
2. Jamuna		
3. Manoharan	...	Petitioners /1 st , 2 nd and 4 th defendants
	/Vs/	
Vanaia	...	Respondent/ Plaintiff

This petition is coming on 04.04.2025 before me for final hearing in the presence of M.Badhrinath Prasath learned counsel for the petitioners and Thiru.C.Jayaprakasham learned counsel for the respondent, upon hearing the both and having stood over for consideration till date, this court delivered the following:-

ORDER

This petition has been filed Under Order 9 Rule 7 and section 151 of CPC to set aside the exparte order passed against the 1st, 2nd and 4th petitioners in the suit.

1. Brevity of the petition is as follows:

The petitioners herein are the 1st, 2nd and 4th defendants in the suit and suit has been filed by the respondent seeking the relief of partition and permanent injunction. The case was posted on 19.07.2023 for filing of written statement by the petitioners. However, material documents in respect to the suit property were misplaced in the house of the petitioners and thus, they

could not able to hand over the same to the counsel for the preparation of the written statement. Moreover, the petitioners went to their family deity for worshipping. Consequently, they could not able to appear before this court on 19.07.2023. Therefore, an ex parte order was passed against the petitioners. The non-appearance of the petitioners is neither willful nor wanton and the petitioners have got good merits to succeed the suit. Thus, the petitioners have come forward with the present petition to set aside the ex parte order.

2. The counter filed by the respondent is as follows:

The respondent had denied the averments stated in the petition except that those are specifically admitted by him. The reason stated by the petitioners for non filing of written statement on 19.07.2023 is not true. In order to prolong the litigation, the petitioners have come-forward with the present petition without any proper reasons. There are no merits in this petition. Hence, it is prayed for the dismissal

3. Now the point for consideration is:-

Whether this petition is liable to be allowed or not?

4. Answer to the Point:

Heard the both sides and perused the material available on record. A perusal of above would reveal the fact that the petitioners herein are the defendants in the suit. The suit has been filed by the respondents seeking the relief of partition and permanent injunction. An ex parte order was passed against the petitioners on 19.07.2023. Now, the petitioners have come forward with the present petition to set aside the ex parte order.

5. The petitioners would contend that the suit has been posted on 19.07.2023 for filing the written statement. But, the petitioners could not able to traced out the material documents from their house and they went to the family deity for worshipping. Consequently, they failed to file written statement

on 19.07.2023. Therefore, an exparte order was passed against the petitioners. Per contra, the respondents would contend that the reason stated by the petitioners for the non filing of written statement 19.07.2023 is not true and in order to delay the proceeding, the present petition has been filed.

6. Upon perusal of the records it could be seen that the case was posted on 19.07.2023 for the filing of written statement. But, the petitioners have not filed the written statement on 19.07.2023. Therefore, the petitioners were set exparte in the suit. However, the reason stated by the petitioners for the non filing of written statement is convincing. In this regard, this court observed that as far as possible, Court's discretion should be exercised in favour of hearing and not to shut out hearing. The Hon'ble Apex Court also observed in its judgment reported in **1978 ARC 496 (SC) Ramji das vs Mohan Singh** that the settled view of law on this aspect it is that under the technicality the litigant should not to be estopped from conducting his case on merits. Added to it, mere failure on the part of the petitioners their rights to conduct the case cannot be curtailed in the threshold. Hence, this court inclined to allow the petition.

In the result, the petition is allowed subject to payment of cost of a sum of Rs.1,000/- to the respondent on or before 30.04.2025 failing which the petition will be dismissed.

Dictated by me, to the Steno Typist, transcribed and computerized by her, corrected by me and pronounced in the open court, on this 24th day of April 2025.

(Sd/-L.Kalaivani)

III Additional District Judge,
Salem.

Fair/Draft Order in
I.A.No.1/2025 in
O.S.No.51/2023
Dt. 24.04.2025
III ADJ.,Salem.