

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

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

Monday, the 06th day of January 2025

**I.A.No.7/2024
in
O.S.No.34/2019**

A.Sankar

... Petitioner/Respondent

/Vs/

1. U.Dhanapal (Died)
2. U.Manickam
3. Subathra
4. Kavitha
- 5 Thilaka

... Respondents / Petitioners

This petition is coming on 11.12.2024 before me for final hearing in the presence of Thiru. D.Panneer Selvam learned counsel for the petitioner and Thiru.A.Thirunavukarasu 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 petitioner in the suit.

1. Brevity of the petition is as follows:

The petitioner herein is the 2nd defendant in the suit and the suit has been filed by the Respondent seeking the relief of partition and separate possession. The summon was issued by the court to the petitioner and the same was received by the elder brother of the petitioner who is the 1st

defendant in the case. The elder brother of the petitioner who is the 1st defendant in the suit was looking after the case. While so, on 18.04.2023 the petitioner has received the notice from the advocate commissioner and went to the suit property on 20.04.2023. However, nobody else were present. Thereafter, the petitioner verified E-court diary on 23.04.2023 through his counsel and he learnt that he was set exparte in the suit for non filing of written statement on 12.09.2019. The non filing of written statement by the petitioner is neither willful nor wanton. The petitioner has got good merits to succeed the suit. Thus, the petitioner has come forward with the present petition to set aside the exparte order.

The respondents made endorsement in the petition that the petition may be allowed on cost.

2. Now the point for consideration is:-

Whether this petition is liable to be allowed or not?

3. Answer to the Point:

This petition has been filed by the petitioner who is the 2nd defendant in the suit under order 9 rule 7 of CPC to set aside the exparte order passed against him on 12.09.2019. It is the contention of the petitioner that the summon issued to him was received by his elder brother who is the 1st defendant in the suit and he was looking after the case. While so, the petitioner has received the notice from the advocate commissioner namely Thiru. Subramaniasiva on 18.04.2023 and he went to the suit property on 20.04.2023. But, nobody else were present. Thereafter, the petitioner verified the E-courts records and came to know that he was set exparte in the suit on 12.09.2019 for non filing of written statement. On the other hand, there is no serious objection on behalf of the respondent. The reasons stated by the petitioner for non filing written statement and also the delay in filing this application are convincing. Therefore, in order to provide opportunity to the

petitioner to prove his case this petition is liable to be allowed and on the same time sufferance cause to the respondent also taken into consideration.

In the result, the petition is allowed subject to the payment of cost Rs.1000/- to the respondent on or before 27.01.2025 failing which the petition will be dismissed.

Dictated to the Steno-Typist directly, computerized by her, corrected and pronounced by me in the open court on 06th day of January, 2025

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(Sd/-L.Kalaivani)
III Additional District Judge,
Salem.

Fair/Draft Order in
I.A.No.7/2024 in
O.S.No.34/2019
Dt. 06.01.2025
III ADJ.,Salem.