

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

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

Tuesday, the 21st day of January, 2025.

I.A.1/2021

in
O.S.193/2015

1. Kuppayee
2. Bakkiyam
3. Periammal
4. Pappathi
5. Pothammal
6. Periyasamy
7. Chinnasamy
8. Poonkodi

... Petitioners/ Plaintiffs

/Vs/

1. Arayee @ Bakkiyam
2. Selvam
3. Santhi
4. Venkatesh
5. Jayaprakash
6. Neelavarnam
7. Paramasivam
8. Rayayee
9. Madhu
10. V.G.Arun
11. Angamuthu
12. Parimala
13. Saranya
14. Deepika

... Respondents/Defendants

This petition is coming on 03.01.2025 before me for final hearing in the presence of Thiru.K.M.Jayapal, learned counsel for the Petitioners and

Thiru.K.S.Mohamed Mohideen, learned counsel for the 10th respondent and 1st to 9th, 11th to 14th respondents remained Exparte, upon hearing the arguments of the both and having stood over for consideration till date, this court delivered the following:-

ORDER

This petition has been filed by the petitioner under Order 9 Rule 9 and section 151 of CPC to restore the suit in O.S.No.193/2015 which was dismissed for default on 16.09.2021.

1. Brief case of the petitioners is as follows:-

The petitioners herein is the plaintiffs in the suit and the suit has been filed by the petitioners seeking the relief of partition and other consequential reliefs. The suit was posted on 16.09.2021 for appearance of PW1. But, the PW1 was working as a Sub inspector of police at Yethapur police station and on that day, he was complying the condition imposed upon him in the murder case in which he was the accused and consequently a memo was filed on 16.09.2021. However, this court has dismissed the suit. The 1st petitioner also suffered by coronavirus and he was unable to get the details of case proceeding. Thus, the non-appearance of the PW1 is neither willful nor wanton. After knowing the dismissal of suit the petitioners have come-forward with the present petition and they got a good case in merits. Hence, the present petition to restore the suit.

2. The counter filed by the 10th Respondent in brief is as follows:-

The respondent had denied the averments stated in the petition except that those are specifically admitted by him. This court has provided sufficient time to the petitioners for the appearance of PW1. But, he has not appeared as per the order of the court. Moreover, the petitioners have not stated the details of the case in which condition was imposed upon the PW1 and they

have also not produced any medical certificate for the ailment of the 1st petitioner. In order to harass the respondent the present petition has been filed. Hence, it is prayed for dismissal.

3. Point for consideration is:

Whether this petition is liable to be allowed or not?

4. Answer to the Point:-

This is the petition under Order 9 Rule 9 of CPC to restore the suit which has been dismissed for default on 16.09.2021. After perusal of averments found in the petition and affidavit this court reaches the conclusion through the following path of analysis. Upon reading of records, it is apparent that the suit was dismissed for default on 16.09.2021 for the non-appearance of PW1. It is contended by the petitioners that the suit was posted on 16.09.2021 for appearance of PW1. But, the PW1 was working as a Sub inspector of police at Yethapur police station and on that day, he was complying the condition imposed upon him in the murder case in which he was the accused and consequently a memo was filed on 16.09.2021. However, this court has dismissed the suit. Per contra, the 10th respondent would contend that the petitioners have not turned up even after the sufficient opportunity provided to them. Therefore, this court has rightly dismissed the suit.

5. It is evident from the adjudications passed by this court that the petitioners have not utilized the earlier opportunities provided to them. However, the reason assigned by the petitioners for the non-appearance of PW1 is convincing. It is true that the petitioners had not produced any medical certificate to show the ailment of the 1st petitioner. But, the non production of medical certificate is not a ground for dismissal of this petition. 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 is not to be estopped from conducting his case on merits. Added to it, mere failing on the part of the petitioners, their rights to conduct the case cannot be curtailed. Considering the same in the interest of justice this petition is liable to be allowed. On the other hand, the sufferance of 10th respondent also considered and the act of the petitioners should be curtailed through the way of paying the cost.

Finally, the petition is allowed, subject to payment of cost of a sum of Rs.1500/- to the 10th respondent directly on or before 06.02.2025, failing which the petition will be dismissed.

Dictated to the Steno-Typist, typed by her directly, corrected and pronounced by me in the open court, this the 21st day of January 2025.

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

Fair/Draft Order in
I.A.No.1/2021 in
O.S.No.193/2015
Dt. 21.01.2025
III ADJ.,Salem.