

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

PRESENT: Thiru. R.Velaras, B.Sc., B.L., L.L.M.,

I Additional District Judge, Salem,
Tuesday, the 26th day of August, 2025

I.A.No.4/2024

in

O.S.No.126/2019

1. Saperumal gounder
2. Sakthivel
3. Anai gounder
4. Kaliya Gounder
5. Arunkumar
6. Azhagammal
7. Saravanan

... Petitioners/Defendants No.1 to 5,7 & 14

/ Versus /

Poovi

..... Respondent/Plaintiff

This petition is coming on 09.08.2025 before me for final hearing in the presence of Thiru.M.Jagannathan, learned counsel for the Petitioners and Thiru.K.Sivakumar, learned counsel for the Respondent, upon hearing the both and having stood for consideration till date, this court delivered the following.

ORDER

This petition has been filed by the petitioners/ defendants No.1 to 5, 7 & 14 under Order 9 Rule 7 of CPC to set aside the ex-parte order against the petitioner/defendants 1 to 5, 7 & 14 dated 15.11.2024.

2. **The brief facts of the Affidavit is as follows:-**

The 4th petitioner is the 4th defendant in the above suit. The 4th petitioner/4th defendant is filed the affidavit himself and on behalf of other petitioners also. The above suit was filed by the Respondent/Plaintiff seeking the relief of Partition and

declaration against the defendants. The above case was posted for cross of the plaintiff side evidence on 15.11.2024. The 1st and 3rd defendants are not doing well they are affected from viral fever. Hence, they have not meet the counsel to give instructions for cross examinations. Now only the petitioner contacted his Advocate and the petitioner came to know that the petitioners are called absent and set exparte on 15.11.2024. The absent is neither willful nor wanton. Hence, the petitioners prays to set aside the ex-parte order against the petitioners dated 15.11.2024.

3) **The brief fact of the counter statement filed by the Respondent/Plaintiff is as follows:-**

The petition is false, frivolous, vexatious and untenable in law and on facts. The averments contained in the affidavit are all false except those that are specifically admitted in this counter. It is false to say that the defendants 1 and 3 are not doing well and they are affected from viral fever. It is false to say that now only the 4th respondent contacted his counsel, then only the petitioner came to know that they are called absent and set exparte on 15.11.2024. The petitioners did not submit any documents to prove the illness of respondents 1 and 3. They are hale and healthy and they are attending the agricultural operation regularly, but the petitioners have falsely stated that the petitioners 1 to 3 are affected with viral fever. They have to prove the same. This petition has filed by the defendants 1 to 5, 7 and 14. But the affidavit averments are very silence regarding their absence in the suit proceedings. If really the affidavit averments are true the other petitioners should have been attended this court. The petitioners had taken several adjournments for cross

examination of PW.1. It is clearly reveals that the purpose of filing this petition is only to drag the proceedings. The petitioners did not approach this court with clean hands. There is no merit in the petition. Hence, this respondent has prays to dismiss the petition.

4. Now the point for consideration is:-

Whether this petition is liable to be allowed or not?

5. Point:-

Heard both sides and perused the material available on record. A perusal of above would reveal the fact that the petitioners herein is the defendants No.1 to 5,7 & 14 in the suit and suit has been filed by the respondent/plaintiff seeking the relief of Partition, and declaration. The petitioners are set exparte in the suit on 15.11.2024. Now, the petitioners have come forward with the present petition to set aside the exparte order.

6. The petitioners/ defendants No.1 to 5,7 & 14 would contend that the case was posted for cross of the plaintiff side evidence on 15.11.2024. On that date the 1st and 3rd defendants are affected from viral fever and they have not met their counsel to give instructions for cross examinations. Hence, this court was passed an exparte order against the Petitioners/defendants No.1 to 5,7 & 14. Per contra, the respondent/plaintiff would contend that the reason stated by the petitioners are not true and in order to delay the proceeding the present petition has been filed.

7. Upon perusal of the records it could be seen that the case was posted on 15.11.2024 for cross of the plaintiff side evidence. But, the petitioners/ defendants

No.1 to 5,7 & 14 are not present in this court to cross examination of P.W.1. Since this suit is for Partition and Separate possession, declaration of some deeds and Permanent Injunction. Therefore, I am of view that the Petitioners/Defendants No.1 to 5,7 & 14 may be given an opportunity to contest this case. This suit is still pending since the D13 is contesting the case. Therefore, the reasons stated by the petitioners for the non appearance and for cross of the plaintiff side evidence are convincing. On the same time there is a delay on the part of the petitioners in filing this petition and thus, sufferance caused to the respondents also taken in to consideration.

In the result, this petition will be allowed on payment of cost of Rs.5000/- by the petitioners/ defendants No.1 to 5,7 & 14 to the respondent/plaintiff on or before 10.09.2025, failing which this petition shall stands dismissed automatically without any further reference. Call on 11.09.2025.

Dictated to the Steno Typist directly, computerized by her corrected and pronounced by me in the open court on 26th day of August 2025.

(Sd/- R.Velaras)
I Additional District Judge,
Salem.

Annexure : Nil

(Sd/- R.Velaras)
I Additional District Judge,
Salem.