

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

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

Saturday, the 05th day of April 2025.

**I.A.No.2/2024
in
O.S.No.571/2024**

1. Saraswathi
2. Janarthanan

... Petitioners/ 1st and 2nd Defendants

/Vs/

1. Shanthi
2. Jegannathan
3. Megala

... Respondents/Plaintiffs

This petition is coming on 28.02.2025 before me for final hearing in the presence of Thiru.T.Murugesan, learned counsel for the petitioners and Thiru. P.Ashok, learned counsel for the respondents, 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 petitioners/ 1st and 2nd Defendants.

1.Brevity of the petition is as follows:

The petitioners herein are the 1st and 2nd defendants in the suit and the suit has been filed by the respondents seeking relief of partition and other consequential reliefs. The case was posted on 08.11.2024 for the

appearance of the petitioners and the petitioners came to the court campus at 10.15 AM. But, the petitioners could not able to reach the present court hall within the calling hours. Consequently, an exparte order was passed against the petitioners and the same was informed to their counsel. The non-appearance of the petitioners and non filing of written statement 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 exparte order.

2.Nutshell of the counter filed by the 1st respondent and adopted by the 2nd and 3rd respondents is as follows:

The respondents had denied the averments stated in the petition except that those are specifically admitted by them. The petitioners have incorrectly represented the nature of the suit. It is false to state that petitioners were present at the court campus on 08.11.2024 at 10.15 AM. However, they could not able to reach the court hall within the calling hours. There are no merits in this petition. Hence, it is prayed for dismissal.

3. Now the point for consideration is:-

Whether this petition is liable to be allowed or not?

4. Answer to the Point:

The present petition has been filed by the petitioners to set aside the exparte order passed against them on 08.11.2024. It is the case of the petitioners that the case was posted on 08.11.2024 for the appearance of the petitioners and the petitioners came to the court campus at 10.15 AM. But, the petitioners could not able to reach the present court hall within the calling hours. Consequently, an exparte order was passed against the

petitioners. Per contra, the respondents would contend that the petitioners wantonly failed to appear before this court and the reason stated in the petition for the non-appearance is not true.

5. Upon perusal of the records it could be seen that the case was posted on 08.11.2024 for the appearance of the petitioners and the petitioners have not appeared before this court on 08.11.2024. Therefore, the petitioners were set exparte in the suit. However, the reasons stated by the petitioners for their non-appearance are 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 is 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. For the foregoing reasons this court inclined to allow this petition and on the same time sufferance caused to the respondents also taken into consideration.

In the result, the petition is allowed subject to payment of cost of a sum of Rs.1,000/- to the respondents on or before 28.04.2025 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 05th day of April 2025.

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

Fair/Draft Order in
I.A.No.2/2024 in
O.S.No.571/2024
Dt. 05.04.2025