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

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

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**Tuesday, the 04th day of March 2025**

**I.A.No.1/2024**
**in**
**O.S.No.537/2023**

1. Pappathy @ Rasammal
2. Manivel
3. Saritha
4. Sathyaraj
5. Devarajan … Petitioners/4th to 8th defendants

/Vs/

Kandasamy … Respondent/ Plaintiff

This petition is coming on 18.02.2025 before me for final hearing in the presence of P.R.Kavitha learned counsel for the petitioners and Thiru.G.Muthamilselvan 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 of CPC to set aside the exparte order passed against the petitioners in the suit.

**1. Brevity of the petition is as follows:**

The petitioners herein are the defendants in the suit and suit has been filed by the respondents seeking the relief of partition and other consequential reliefs. The suit has been posted on 28.11.2023 for filing written statement. But, the petitioners could not able to obtained revenue records and consequently they failed to file written statement on 28.11.2023. Therefore, an exparte 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 exparte 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. It is true that the suit was posted on 28.11.2023 for filing written statement. But, the petitioners have not filed written statement. Hence, an exparte order was passed against the petitioners. However, it is false to state that the petitioners could not able to obtained revenue records and thus, they failed to filed written statement 28.11.2023. The petitioners have not mentioned as what are all the documents they are expecting from the revenue officials. 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 other consequential reliefs. An exparte order was passed against the petitioners on 28.11.2023. Now, the petitioners have come forward with the present petition to set aside the exparte order.

5. The petitioners would contend that the suit has been posted on 28.11.2023 for filing written statement. But, the petitioners could not able to obtained revenue records and consequently they failed to file written statement on 28.11.2023. 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 28.11.2023 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 28.11.2023 for the filing of written statement. But, the petitioners have not filed the written statement on 28.11.2023. Therefore, the petitioners were set exparte in the suit. It is true that the petitioners have not stated as to when they have applied copies in Revenue office and also they have not produced alleged certified copies along with this petition. 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 20.03.2025 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 04th day of March 2025.

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

Fair/Draft Order in
I.A.No.1/2024 in
O.S.No.537/2023
Dt. 04.03.2025
III ADJ.,Salem.