

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 10th day of February 2025

**I.A.No.1/2024
in
O.S.No.638/2023**

1. Valli
2. Senthilkumar
3. Jeyanthi

... Petitioners

/Vs/

1. Rathinammal
2. Vijayan
3. Nandhini Devi

... Respondents

This petition is coming on 29.01.2025 before me for final hearing in the presence of Thiru.B.Sivaram 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 in the suit.

1. Brevity of the petition is as follows:

The petitioners herein are the Defendants in the suit and the suit has been filed by the Respondents seeking the reliefs of partition and other consequential reliefs. The suit has been posted on 22.01.2024 for filing written statement. But, the petitioners have applied for the certificates copies of documents in Sub Registrar office. Therefore, they could not able to file written statement on 22.01.2024. Hence, an exparte order was passed against the petitioners. The non filing of Written statement by the petitioners is neither willful nor wanton. 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 2nd respondent and adopted by the 1st and 3rd respondents is as follows:

The respondents had denied the averments stated in the petition except that those are specifically admitted by them. It is false to state that the petitioners could not able to obtained copies from the Sub registrar office. The petitioners have not mentioned about the documents which were obtained by them from the Sub registrar office and they have also not stated as to when they have applied for copies. This court has granted more than two months time for filing written statement. However, the petitioners have failed to file the written statement. 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:

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 22.01.2024. Now, the petitioners have come forward with the present petition to set aside the exparte order.

5. The petitioner would contend that the suit was posted on 22.01.2024 for filing written statement by the petitioners. But, the petitioners have applied for the certificates copies of documents in Sub Registrar office. Therefore, they could not able to file written statement on 22.01.2024. Consequently, an exparty order was passed against the petitioners. Per contra, the respondents would contend that the reason stated by the petitioner for the non filing of written statement 22.01.2024 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 22.01.2024 for the filing of written statement. But, the petitioners have not filed the written statement on 22.01.2024 . 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 Sub registrar 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 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. 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.1,500/- to the respondents on or before 27.02.2025 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 10th day of February 2025.

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

Fair/Draft Order in

I.A.No.1/2024 in

O.S.No.638/2023

Dt. 10.02.2025

III ADJ.,Salem.