

**IN THE COURT OF THE DISTRICT MUNSIF, SANKARI**

Present: Tmt. R. ELAMATHI, B.A., B.L.,  
District Munsif Court, Sankari

Thursday, the 05<sup>th</sup> day of June, 2025

திருவள்ளூர்வராண்டு 2056, விசுவாவசு வருடம், வைகாசி திங்கள் 22 ம் நாள் வியாழக்கிழமை

**I.A. 18/2023 in O.S.146/2014**

Kandasamy ... Petitioner / 5<sup>th</sup> Defendant

//Versus//

1. Eswaran (died)

2. Anbarasu

3. Sellamuthu

4. Kandasamy (died)

5. Kalamani

6. Keerthivarman

7. Sowmiya

... Respondents / Plaintiffs

This petition taken to file on 28.11.2023 and coming on this day 24.04.2025 for hearing before me in the presence of Thiru. T. Dharmalingam, Thiru. S. Kuppusamy and Selvi. M. Abirami Advocates for the Petitioner and of Thiru. K. Kasilingam, Advocate for the Respondents No.2,3,5 to 7 and R1, R4 were died and after perusing the Petition, counter and both side arguments this Court passed the following,

**ORDER**

This Interlocutory Application has been filed by the Petitioner/ 5<sup>th</sup> Defendant Under Section 151 of the Civil Procedure Code, 1908 to reopen the case for Defendant side evidence.

**2) The Gist of the petition:-**

The petitioner submits that he is the 5<sup>th</sup> defendant in the suit in O.S.No.146/2014. The Respondents filed the suit for Declaration and Permanent Injunction and the suit was posted for Judgment. Based on

discussion with petitioner counsel, the petitioner/ 5<sup>th</sup> defendant could not instruct to his Advocate with full particulars about the facts relating to the above case. Consequently, the petitioner's advocates did not elicit some of the important aspect in respect of the petitioner's case. Therefore, it is necessary to reopen the case for defendant side. Otherwise the petitioner/ 5<sup>th</sup> Defendant will be put to much of loss and hardship. Hence, this petition.

**3) The Brief Averments of Counter filed by the 3<sup>rd</sup> Respondent/Plaintiff and adopted by Other Respondents:-**

3.1) The Respondents contends that the petition is false, frivolous, vexatious and unsustainable in law and on facts, the respondents does not admit any of the allegations made in the affidavit except those which are specifically admitted and the petitioner's have strict proof of the same. The Respondents/Plaintiffs filed the above suit for declaration and Mandatory Injunction and other reliefs against the defendants.

3.2) The Respondents/Plaintiffs further submits that, on 04.08.2014 the petitioners 2 and 3 called absent set exparte and filed Order 9 Rule 7 application on 08.10.2014. The 1<sup>st</sup> respondent filed chief affidavit along with Order 7 Rule 14 (3) of C.P.C., petition I.A.No.1/2019 on 02.03.2019, on that day the petitioners and their counsel were not appear hence the petitioner sent copy of chief affidavit, said petition and affidavit through registered post to the petitioner's counsel and filed memo along with acknowledgment card on 13.03.2019. Notice of hearing sent and filed before this court on 12.04.2019. On 14.06.2019 the suit is posted for counter in I.A.No.1/2019, on that day the petitioners/defendants were called absent set exparty. On 18.11.2019 and 21.11.2019 the PW2 and PW3 were examined respectively and posted for judgment on 20.01.2020, 29.01.2020, 07.02.2020 and 19.02.2020. It is further submit that the respondents/plaintiffs filed Order 1 Rule 10 petition to implead father of

the 1<sup>st</sup> plaintiff as 4<sup>th</sup> defendant in the above suit and also ordered to issue notice through court and post. On 09.02.2021 the said notice were served and Thiru T. Dharmalingam advocate filed Vakalatha for Respondents 6 and 7 / defendants 6 and 7 and 5<sup>th</sup> respondent called absent set ex-party. Again the above suit was posted to 07.07.2022 for judgment. Again the petitioners has filed Order 9 Rule 7, Order 18 Rule 17 and Section 151 of CPC in I.A.No.7/2022, I.A.No.8/2022 and I.A.No.9/2022 and the same were allowed by this court on 07.12.2022 on payment of cost. The petitioners/defendants again set ex-parte on 21.04.2023 for non examination of plaintiff side witness and non appearance of petitioners. Again the petitioners filed this application to set aside the ex-parte order. The above suit was posted to 01.06.2023 for additional written statement on that day the petitioners were called absent set ex-parte. On 12.06.2023 the plaintiff side argument heard and posted for judgment on 15.06.2023. Now again the petitioners leave it set exparte wantonly and filed this application to drag on the proceedings.

3.3) The Respondents/Plaintiffs further more submits that the petitioners are well known about the exparte order. The reason stated in the affidavit are false and for the purpose of drag on the proceedings. The petitioners are watching each and every proceedings from outside the court and they were fully aware of the case proceeding. The petitioner filed this petition 3<sup>rd</sup> time to set aside the exparte order and 2<sup>nd</sup> time of recall and reopen petition to examine the Respondents/Plaintiffs side witness. The Respondents/Plaintiffs side witnesses PW1 to PW3 were examined and plaintiff side arguments heard and posted for judgment, in the mean time the petition is not maintainable in law. Therefore, the Respondents/Plaintiffs prays this court to dismiss the petition with cost.

4) No documents were marked on the side of the Petitioner/ 5<sup>th</sup> Defendant and Respondents/Plaintiffs.

**5) Point for consideration:-**

Whether the Petitioner/ 5<sup>th</sup> Defendant is entitled for the relief as prayed for?

6) Heard both sides. Records perused. The petitioner has filed this Interlocutory Application Under Section 151 of Civil Procedure Code, 1908 to reopen the case for defendant side (R5) evidence. The main suit has been filed for the declaration and permanent injunction. The petitioner/ 5<sup>th</sup> defendant submits that he could not furnish important instructions to his counsel prior to final hearing. The earlier non participation was neither wilful nor intentional. The petitioner/ 5<sup>th</sup> Defendant submits that his evidence is important for fair adjudication and failure to reopen the case will cause irreparable loss and hardship to the petitioner/ 5<sup>th</sup> defendant.

6.1) On the other hand, the Respondents/Plaintiffs contends that this is the 3<sup>rd</sup> time petition filed Under Order 9 Rule 7 and 2<sup>nd</sup> time petition to reopen the defendant side evidence. The conduct of the petitioner is aimed at delaying the proceedings. The case has already undergone extensive examination including PW1 to PW3 and the matter was posted for judgment multiple times. The Respondents/Plaintiffs further submits that the petitioner/ 5<sup>th</sup> defendant was aware of the proceedings and had been repeatedly absent. This court is bound to cite certain judgments of the **Hon'ble Supreme Court in K.K. Velusamy –Vs – N. Palanisamy (2011) 11 SCC 275.** "Inherent powers Under Section 151 of Civil Procedure Code may be invoked to reopen a case and receive evidence if the ends of justice so require." **In Arjun Singh – Vs- Mohindra Kumar, AIR 1964 SC 993,**

“Reopening can be permitted if it is found that non appearance was not intentional (or) contumacious and that prejudice will be caused otherwise. **In Salem Advocate Bar Association – Vs- U.O.I (2005) 6 SCC 344** “ the court has inherent power to do justice and to act ex debito justitiae (to prevent justice).

7) The Respondents/Plaintiffs contends that 3 times petition has been filed to set aside the ex parte order and 2 time of recall and reopen petition filed. After perusing the records this court could see that this was the 1<sup>st</sup> petition filed by the petitioner/ 5<sup>th</sup> defendant to set aside the ex parte order and reopen of defendant side evidence after he was set ex parte on 29.07.2019. Moreover, this court is of the opinion that justice demands that every party should be given one final opportunity to present their case. The power Under Section 151 of CPC can be invoked to prevent miscarriage of justice and secure the ends of justice, particularly when non- reopening would amount to denial of fair trial. The right to lead evidence is a vital component of the principles of natural justice and ought not to be denied solely on procedural grounds, provided the opportunity is not misused again.

8) After careful consideration of facts and records and based upon the judgments discussed this court is of the view to give more fair opportunity to defend his case. At the same time while considering the hardship caused by the petitioner/ 5<sup>th</sup> defendant this court is of the view that the hardship may be compensated by terms of costs. Therefore, for the above said reasons and without prejudice to both parties and in the interest of justice, this petition stands allowed on condition of payment of costs.

9) In the result, this petition stands allowed on condition that the petitioner shall pay a cost of Rs.500/- (Rupees Five Hundred only) to the Respondents/Plaintiffs on or before 12.06.2025; failing which, this petition stands automatically dismissed. Call on 13.06.2025.

This order directly dictated to the Steno-typist and typed by him and corrected by me, and Pronounced in the Open Court in the 05<sup>th</sup> day of June, 2025.

District Munsif,  
Sankari.

**Encl.:** - Nil-

District Munsif,  
Sankari.