

IN THE COURT OF DISTRICT MUNSIF, METTUR, SALEM DISTRICT

Present: **Thiru. M.Selvam, B.A., B.L.,**

District Munsif, Mettur

Thursday, this the 20th day of November 2025

I.A.No. 05 of 2025

in

O.S. No. 215 of 2023

(CNR No.TNSA17-000288-2023)

Madhu

...Petitioner/Defendant

/versus/

Samiyannan

... Respondent/Plaintiff

This petition is heard in the presence of Mr. S.K. Senthil Kumar., B.A., B.L., the Learned counsel for the Petitioner/Defendant and Mr. S. Sankar., B.Com., B.L., the Learned counsel for the Respondent/Plaintiff. Enquiry heard on both sides and having stood over for my consideration till this day, this court delivered the following,

ORDER

This petition has been filed by the Petitioner/Defendant under section 5 of the Limitation Act, 1963 to condone the delay of 34 days in filing the petition to set-aside the exparte decree dated 15.07.2025 passed in the original suit.

1. Brief facts in the petition is as follows:

1.1. The petitioner herein is the defendant in the original suit. The suit property in Survey no. 463/3 to an extent of 46 cents belongs to the petitioner vide patta no.1355. The name Madhu S/o. Ponnappan in the patta is the petitioner herein. The name of One Kailasam S/o. Ponnappan was wrongly mentioned in the patta. The petitioner's father had no other son except the

petitioner. Hence, the petitioner had given application to the revenue department to remove the said name Kailasam S/o. Ponnappan from the patta.

1.2. The petitioner had engaged an counsel of their village by name Mr. Bhakathsingh and had also given vakalath and all relevant documents of the suit property. He had received the same and assured that he will look after the case and insisted the petitioner to come, when he was called upon. But suddenly on 10.09.2025, the respondent had started to construct house in the suit property. When he had questioned the same, the respondent had threatened with the police officials that he had obtained order from the court.

1.3. Thereafter, when the petitioner had contacted his previous counsel, he again stated that no problem and he will look after the case. Then the petitioner had engaged a new counsel and verified the court records and came to know that due to non filing of written statement, the suit was decreed expartely. Hence, he had filed this petition along with the written statement to condone the delay of 34 days in filing petition to set-aside the exparte decree.

2. Brief facts in the counter filed by the respondent is as follows:

2.1. The respondent specifically denied the averments made by the petitioner in his petition. If the petitioner had truely submitted all the documents, his counsel would have filed the written statement. Since, there was no documents relevant to the suit, the petitioner had leaved the suit without proceeding. The petitioner had appeared in the suit on 05.03.2024 and then, the suit was posted for filing written statement by the petitioner till 18.12.2024 and thereafter, he was set-exparte and exparte judgment was also passed. The petitioner had not taken any steps to proceed in the suit for nearly 8 months. This

petition is also filed by the petitioner after 3 months from the date of the exparte decree. Hence, this petition is liable to be rejected.

3. No oral and documentary evidence on either side.

4. Point for Consideration:

(i) Whether this petition has to be allowed or not ?

5. Both side rival submissions heard with regard to their respective pleadings and perused the materials on records. The original suit was filed by the respondent/plaintiff for the relief of permanent injunction restraining the petitioner/defendant from in any way interfering the respondent's possession in the suit property. In the original suit, though the petitioner had appeared through a learned counsel, he was set-exparte for non filing of written statement and subsequently, an exparte decree was also passed on 15.07.2025.

6. It is the contention of the petitioner that he had submitted all the relevant documents in respect of the suit proceedings with his previous counsel and he had also assured to look after the case, but he had leaved it for exparte. The petitioner had appeared through his counsel in the suit on 05.03.2024 and the suit was expartely decree on 15.07.2025. The petitioner's contention to the above said effect was not acceptable for nealy a period of 1-1/2 years. The petitioner, who is a party to the suit proceedings should also be vigilant about the same.

7. Admittedly, the petitioner herein had also filed his written statement along with this petition. It is the contention of the petitioner that the suit property belongs to him vide a patta bearing no. 1355. The said patta was also

produced by the petitioner along with the written statement. It is well settled principle that refusing to condone the delay can result in meritorious matter being thrown out at the initial stage and cause the justice being defeated. Further, it is well settled that the word sufficient cause under section 5 of the Limitation act should adopt a liberal and justice oriented construction to advance the justice. As already discussed, the suit has been filed for the relief of permanent injunction and the petitioner herein is also claiming right over it. At this juncture, this court forms opinion that it will advance the interest of justice for both the parties, if the main suit was decided on merits on considering both sides evidence if any produced before this court. Therefore, this court finds that an final opportunity can be given for the petitioner herein to proceed with the main suit. However the delay caused to the respondent/defendant has be considerably compensated by the manner known to law. Hence, this court is inclined to allow this petition on payment of cost.

In the result, this petition is allowed on payment of cost of Rs. 2,000/- to the respondent on or before 05.12.2025, failing which this petition stands dismissed. For compliance call on 06.12.2025.

This order is typed by me in my official laptop, corrected and pronounced by me in the open court on this 20th day of November 2025.

**District Munsif,
Mettur**

Both side witnesses and documents: Nil

**District Munsif,
Mettur**