

IN THE COURT OF THE DISTRICT MUNSIF, DEVAKOTTAI

PRESENT : Tmt.R.PREMI, B.A., L.L.B., (Hons).,

District Munsif, Devakottai

Wednesday, the 4th day of June, 2025

I.A.No.11/2023

in

O.S.No.37/2013

K.Nachammai

... Petitioner/Plaintiff

-Vs-

- 1.S.Pappal (died)
- 2.S.Muniyammal,
- 3.S.Indrani,
- 4.S.Shanthi,
- 5.S.Ramasamy, (Died)
- 6.S.Gandhi,
- 7.Kathiresan, (Died)
- 8.R. Rajendran,
- 9.R. Kuppammal,
- 10.N.Veluthevar,
- 11.N.Subramanian,
- 12.V.Ramanathan,(Died)
- 13.V.Karmegam,
- 14.V.Ganesan,(Died)
- 15.Rajamani,
- 16.Suriya
- 17.Jaya
- 18.Valli
- 19.Sankar,
- 20.Kumar,
- 21.Samythurai,
- 22.Meenal,
- 23.Nagajothi,
- 24.Pandi,
- 25.Vairamani,
- 26.Pooranam,
- 27.Udhyanan,
- 28.Murali,
- 29.Muniyammal,
- 30.Indhirarani,
- 31.Santhi
- 32.V.Pomayil

33.V.kanaesan,
34.Selvi
35.Vijaya
36.Shanthi

... Respondents/ Defendants

This petition is coming before me for final disposal in the presence of Thiru.K.Premchandar learned advocate for the Petitioner/Plaintiff and Thiru.C.Lenin Bharathi learned advocate for the R2, R4, R8, R11, R13, R18, R23 to R25, R32 to R36. Where as R2, R4, R8, R11, R13, R18, R23 to R25, R32 to R36 was Set exparte on 07.03.2024 and 05.08.2024 and Thiru.S.Sornaprakash learned advocate for the R15 to R17, where as Set exparte on 07.03.2024 and R1, R5, R7, R10, R12 and R14 were as Died, R3, R6, R9, R19 to R22, R26 to R31 were as Set exparte in Original Suit and case having stood over till this day for consideration, this court delivered the following order:

ORDER

Petition is filed under order IX Rule 9 of CPC.

2. The averments in the petition are as follows:

The petitioner is the plaintiff in the original suit. The original suit has been filed for the relief of preliminary decree for partition of the suit property. The suit was at the stage for additional written statement of the defendants. The court has ordered for the appearance of both the parties, despite the said order the petitioner has not appeared to represent the suit. Hence the suit was dismissed for default on 08.02.2023. The plaintiff claims that his non-appearance was not willful and it was because the plaintiff was suffering from severe fever and was getting treatment from the hospital. The petitioner has filed present petition to restore the suit that has been dismissed for default. He also claims that if the suit is not restored, the petitioner will be subject to irreparable loss and injury. Hence, he prays for the petition to be allowed.

3. The averments in the counter filed by the respondents are as follows:

The respondents R1, R5, R7, R10, R12, R14 have died. The respondents R3, R6, R9, R19 to 22, R26 to R 31, were set ex-parte in the main case. Despite giving sufficient opportunity to the remaining respondents, the respondents have not appeared to contest the petition and so the respondents R2, R4, R8, R11, R13, R15 to 18, R23 to 25 were set Ex-parte on 07.03.2024. Similarly, the respondent R32 to 36 were set Ex-parte on 05.08.2024. Hence, no counter has been filed.

4. Now the question to be decided is whether the petition has to be allowed or not?

The petitioner is the plaintiff in the original suit. The main suit has been filed for the relief of preliminary decree of partition the suit property. Originally the suit was filed before the Honourable Sub Court of Devakottai and numbered as OS 57/2012. Subsequently, it was transferred to the District Munsif Court, Devakottai and numbered as OS 37/2013. While the suit has been proceeding for trial, there was no representation from the plaintiff on various dates like 11.01.2023, 25.01.2023, 01.02.2023, and even on 08.02.2023. Hence, the suit was dismissed for default on 08.02.2023 by the court as the plaintiff has not begun the trial even after 11 years of institution of suit. Hence, the present petition has been filed. This petition has been filed on 15.02.2023 Which is well within the time frame. This shows the intention of the petitioner to conduct the case. The petitioner has stated the reason for his non-appearance as illness. The reason given by the petitioner is satisfactory. It is pertinent to take into note the judgment of the honourable apex court in the case of **state of Bihar vs Kameshwar Prasad Singh AIR 2000 SC 2306**, wherein the honourable Supreme Court has held that court should favour a decision on merits rather than dismissing the suit on procedural default. Taking into consideration this judgment and the fact that the plaintiff should be given an opportunity to represent his case. The court finds it fit to allow this petition. But since the default of the plaintiff/petitioner has caused delay to the court and has delayed the Conduct of the suit, also considering the fact the suit is of the year 2012, the court imposes a cost of rupees 3000 on the petitioner to discourage acts in the future. On payment of the said cost the petitioner shall proceed with the suit.

Decision

In the end, the petition is allowed with the cost of Rs.3000/-.

This Order was dictated by me, typed by the steno-typist, corrected by me and pronounced by me in the open court on 4th day of June 2025.

**Sd/- Tmt.R.Premi
District Munsif,
Devakottai.**

Annexures:

List of witnesses on the side of the Petitioner/Plaintiff-Nil-

List of documents on the side of the Petitioner/Plaintiff -Nil-

List of witnesses on the side of the Respondents/ Defendants-Nil-

List of documents on the side of the Respondents/ Defendants-Nil-

**Sd/- Tmt.R.Premi
District Munsif,
Devakottai.**