

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
TIRUVANNAMALAI.

PRESENT : **Thiru P. Mathusuthanan, B.A., B.L.,**

Principal District Judge,

Tiruvannamalai

Thursday, the 05th day of October - 2023

I.A.No.2/2023 in O.S.No.111/2021

Rukmani @ Maniyammal

...

Petitioner / plaintiff

versus

1. Poongodi

2. Chinnammal

3. Amulu

4. Selvi

5. Ramesh

6. Chinnapaiyan

...

Respondents / Defendants

This Interlocutory Application has come up before me for final hearing on this day (05.10.2023) and upon hearing the arguments of Thiru. V.C.Dhinakaran Learned Advocate appearing for the Petitioner and Thiru. V.Janagiraman Learned Advocate appearing for the Respondents and upon perusing the available records and having stood over for consideration till this day, this court passed the following...

ORDER

The petitioner / plaintiff filed this petition under Or.9, Rule 9 of CPC praying to restore the suit which was dismissed for default on 20.06.2022.

2) The averments of the petition in brief, are as follows:

The petitioner is the plaintiff in the Suit. The petitioner/plaintiff filed the suit against the respondent/defendant seeking the relief of partition and permanent injunction. On 20.06.2022 this court had ordered to summon the defendants/respondents in the original case. Since the petitioner and her family members staying at Kerala and doing coolie work, the petitioner unable to meet her counsel and did not pay the batta to the defendant. In such a circumstance the suit filed by the petitioner was dismissed for default. It is neither willful nor wanton. Hence this petition to restore the suit.

3) The averments in the counter filed by the 5th respondent/5th defendant and adopted by the respondents 1 to 4 and 6, in brief, are as follows:

This petition is false and vexatious, and is unsustainable either on question of law or on facts and is liable to be dismissed in limini. This respondent does not admit any of the allegations contained in the affidavit save those that which are specifically admitted herein and put the petitioner to strict proof of the same.

The petitioner falsely stated that he was in Kerala by referring to false associations from the locality. The plaintiff has not filed any document as to when he went to Kerala and upto which date he was working in Kerala and

what he was doing in Kerala. The petitioner has filed the above petition after lapse of 133 days of dismissal of the suit with intent to drag on the proceedings. Hence, he requested to dismiss the petition with costs.

4) **Point that arises for consideration in this Petition is that**

Whether this petition is to be allowed as prayed for?

5) **Point:**

6) Heard both sides, perused the records.

7) On perusal of the records and rival submission placed by the learned counsels appearing for both sides and the reasons set out in the petition it could be viewed that since the petitioner and her family members staying at Kerala and doing coolie work, she unable to meet her counsel and did not pay the batta to the defendant, hence the suit filed by the petitioner was dismissed for default. It is well settled Law that the petitioner shall be given a fair opportunity to contest her case on merits and the right of the petitioner to prove her case cannot be denied at threshold on the ground of mere delay only. Having considered the reason mentioned in the petition as well as the rival submission placed by the Learned counsel for petitioner side, this court observed that the petitioner shall be given an opportunity to conduct her case on merits. Hence, to ensure the fair opportunity to be given to the petitioner and in the interest of justice, this court is inclined to allow this petition. Thus, this point is answered accordingly.

In the result, this petition is allowed. No costs.

This order is dictated by me to the Steno-typist Grade -III of this court, typed by her directly in the computer, corrected and pronounced by me in open court, on this, the 05th day of October - 2023.

Sd/- P. Mathusuthanan
Principal District Judge,
Tiruvannamalai.