

IN THE COURT OF THE DISTRICT MUNSIF, ARNI.

PRESENT: Miss. D.V.Koperundevi,B.com.,L.L.B.,(Hons)

**DISTRICT MUNSIF,
DISTRICT MUNSIF COURT, ARNI.
Thursday the 7th day of AUGUST 2025.**

**I.A. No. 03/2024
in
O.S. No. 105/2018.**

SenthilKumar

... Petitioner/Plaintiff

/Vs/

1.Annamalai
2.Rani
3.Pradeep
4.Devi
5. Ramya

...Respondents/Defendants

This petition came up before me for final hearing on 01.08.2025 in the presence of Thiru. V.Chandrasekar, Advocate for the Petitioner/Plaintiff, and Thiru.K.Narayanan, Advocate for the 1st Respondent/1st Defendant, Thiru.S.Shyamsundar, Advocate for the 2nd & 3rd Respondents/2nd & 3rd Defendants, Thiru. C.M.Vinayagam, Advocate for the 4th & 5th Respondents/4th & 5th Defendants, and upon hearing the both sides enquiry and perusing the material records of this petition and having stood over for consideration till this day, this court delivers the following: -

ORDER

The petitioner filed this petition under Order IX Rule IX and Sec. 151 of Code Civil Procedure 1908.

I. The gist of the averments in the petition:

1. In the affidavit, the petitioner herein is the 1st plaintiff in the main suit.
2. The Respondents in this petition are the Defendants in the main suit.

3. The petitioner have filed a suit for seeking a declaration of his right and possession over the property mentioned in the schedule and consequential injunction to restrain the 2nd and 3rd Defendants, their agents, or anyone claiming through them from interfering with my peaceful enjoyment and possession, and for a permanent injunction.

4. In the original suit, only Defendants 1, 2, and 3 are contesting and filing affidavits. The other Defendants 4 and 5 have not contested. This affidavit is filed on 22.01.2024 for the final arguments in the original suit. Due to the petitioner's inability to appear in person and provide oral testimony, as the petitioner was physically unable to do so, the original case filed by the petitioner, which was proceeding for trial (special list), was dismissed for default by order dated 22.01.2024. The petitioner was informed by his counsel today about the order to proceed in the case. Therefore, based on their advise the counsel, and the petitioner taking this action.

5. The petitioner/Plaintiff, working as a driver in private Bus Service. This is the petitioner's sole means of livelihood and the source of income for his family. The petitioner's wife and children depend on his earnings for their survival. Due to the burden of responsibility, the petitioner's health has been affected, and the petitioner have been experiencing a decline in his physical condition. Consequently, the petitioner was unable to appear for the enquiry in a healthy state. This was an unforeseen circumstance. There are valid reasons for the delay in the original case. Specifically, the petitioner not trying to deceive or mislead the court. Currently, the petitioner's physical condition is somewhat stable. The petitioner was confident that he can continue to pursue this case.

6. Therefore, the petitioner request the Hon'ble Court to kindly restore the original case, which was dismissed for default due to the failure of petitioner to

appear for the enquiry on 22.01.2024, and allow the petitioner/plaintiff, to proceed with the case. The petitioner prays that an appropriate order be issued to this effect, otherwise, he will suffer a loss.

II. The gist of the averments in the counter filed by the 1st Respondent:

1. The petitioner's application seeking to restore the case is inadmissible.
2. The petitioner has filed this petition by stating false facts.
3. The petitioner is well aware that the details of the aforementioned original case will be listed. He is present in his hometown. Furthermore, all the statements made in the petitioner's petition claiming that he was unable to attend the enquiry due to ill health are false. If the petitioner were truly unwell, in the petition he would have specified the nature of his illness and where he received treatment. He has filed this petition without stating any reason, after deliberately letting the case be dismissed for default with the malicious intent to prolong the proceedings. Therefore, this defendant requests that the petition be dismissed, as the petitioner has filed the aforementioned petition without proper cause.
4. This defendant and the plaintiff, who is his son, have had issues for several years, and this defendant and his wife have been living separately. The property mentioned in the plaint was purchased by this defendant with his personal income on 21.05.2001 for proper consideration and he has been enjoying it without any hindrance. In this situation, the plaintiff, who is the son of this defendant, frequently creates problems with this defendant and fails to properly maintain him and his wife, constantly causing issues.
5. Therefore, this defendant and his wife have been living separately for many years. Since this defendant and his wife were without financial

support necessary for their livelihood, he sold the suit property, which was personally owned by him, to the 2nd and 3rd defendants for a proper consideration on 13.04.2018. Furthermore, on the same day, possession of the property was handed over to the 2nd and 3rd defendants. The plaintiff, despite being well aware of the aforementioned details, without supporting this defendant and his wife, falsely claimed that the property acquired by this defendant through self-acquisition was ancestral property and filed the aforementioned suit. The plaintiff filed the aforementioned suit solely to cause harassment.

6. The plaintiff, despite being well aware of the aforementioned details, filed the aforementioned suit with the malicious intention of causing trouble to this defendant and the purchasers after this defendant sold the property to the 2nd and 3rd defendants. The plaintiff is well aware of these details. Furthermore, it is unacceptable that the petitioner abandoned the case out of fear that the truth would be revealed during the trial and has now filed this petition.
7. Therefore, it is requested that the petition filed by the petitioner, stating false reasons, be dismissed with costs to this defendant.

III. The gist of the averments in the counter filed by the 2nd and 3rd

Respondents:

1. The petition filed by the petitioner seeking restoration of the case, which was dismissed for default due to the petitioner's non-appearance for the hearing of the aforementioned case on 22.01.2024, is legally and equitably not maintainable.

2. These 2nd and 3rd respondents deny all the facts stated in the petitioner's petition. The petitioner is bound to prove the facts in the petition that are not admitted by these 2nd and 3rd respondents.
3. The facts stated in paragraph 4 of the petitioner's affidavit are not acceptable.
4. As stated therein, only the 1st to 3rd respondents contested and pursued the case; the 4th and 5th respondents did not raise any objection; and on 22.01.2024, the date the case was special listed for trial, the petitioner was unable to appear before this Hon'ble Court for enquiry and provide written evidence (PW-1). Therefore, the case was dismissed for default. The assertion that the petitioner met the advocate learned the aforementioned details, and filed the said petition based on his advice, is entirely untrue. The petitioner is bound to prove these assertions through proper documents.
5. The facts stated in Para 5 of the petitioner's affidavit are all untrue. As stated therein, the petitioner works as a daily wage private bus driver; that it is the livelihood for his family; that he alone earns and supports the family; that his health has been affected due to work pressure; and that he was unable to appear for the enquiry due to this; and that his health is currently stable; the facts stated are all untrue. The petitioner is obliged to prove them.
6. In reality, there is no connection between the suit property and the petitioner/plaintiff. The suit property was acquired by the first respondent for due consideration from Chinnappa and Gandhi before the Devikapuram Sub-Registrar vide document No. 411/2001 dated 21.05.2001 and he has been enjoying it personally, and these respondents

acquired it for due consideration from the first respondent before documents No. 2760/2018 and 2761/2018 dated 13.04.2018 and have been in possession and enjoyment of it since that day.

7. The petitioner/plaintiff, knowing all the above details, has filed the aforementioned case incorrectly without any documents regarding the suit properties. Knowing that if the case proceeds to trial, the truth will be revealed and the decision will be against him, he deliberately failed to appear for the case hearing on 22.01.2024. Furthermore, the petitioner stated that his health is not well and therefore he could not attend the case hearing. In reality, the petitioner has not clearly specified what his health condition is where he received treatment; and has not submitted any medical consultation records regarding his treatment details; the petition filed stating these reasons is not acceptable.
8. Furthermore, the petitioner's affidavit filed intentionally, it is clearly evident from the aforementioned facts that the petitioner is in a state of mind not to proceed with the case.
9. The petition filed by the petitioner seeking restoration of the case without providing any proper and acceptable reasons for his non-appearance during the enquiry is not maintainable. The petition filed by the petitioner/plaintiff with a malafide intention to prolong the case by not conducting it is not maintainable.
10. Therefore, the respondents prayed this Hon'ble Court to dismiss the petition filed by the petitioner with costs to these respondents, considering the aforementioned reasons.

IV. The gist of the averments in the counter filed by the 4th and 5th**Respondents:**

1. The petition filed by the petitioner seeking to restore the suit, which was dismissed for default due to the petitioner's non-appearance during the trial, is legally erroneous and ought to be dismissed.
2. The plaintiff deliberately obtained from court proceedings and has now filed this petition citing false reasons.
3. The petition falsely claims that only the 1st to 3rd respondents are contesting the case and that these defendants have not raised any opposition. In reality, when the written statement was filed, it was clearly stated that the plaintiff has no right over the suit property and that the entire suit property belongs to the first respondent, and that the petitioner filed the suit falsely. Therefore, the statement in the petition that these respondents did not raise opposition is a false assertion.
4. The petitioner lacks any documents or witnesses to succeed in the main case. Recognizing that the case would not be favorable to him, the petitioner deliberately allowed the case to be dismissed for default with malicious intent to avoid pursuing the case. Therefore, the petition filed by the petitioner should be dismissed.
5. Therefore, the Hon'ble Court is prayed to dismiss the petitioner's petition.

V. Points for Consideration: -

- (i) Whether the petition this petition under order 9 rule 9 and Sec.151 of CPC is to be allowed?

VI. Points: -**Heard on both sides. Records have been perused.**

On consideration of the affidavit, counter affidavit and the materials available on record, it is found that, on 22.01.2024, the case was listed for special list for trial. when the case is posted for trial, the petitioner/ plaintiff was called absent, as the case was pending for (special list) trial from 03.01.2024, the suit was dismissed for default with the docket order as stated below :

The 2nd defendant present. Plaintiff called absent. No representation till 01.00 p.m. This suit is posted for trial (special list). Plaintiff is not ready. Hence, this suit is dismissed for default with cost of 2nd defendant.

This petition is filed to restore the above suit which was dismissed for default on 22.01.2024 for not contesting the case of the plaintiff. The respondents contended that the petitioner wantonly to drag the matter and prayed for dismissal.

Hence, considering the stage of the case and for expeditious disposal of the above suit on merit, this Court is inclined to allow this petition.

VII. Result: In fine, this petition is allowed. No costs.

Dictated to a stenographer and computerized by her directly, corrected and pronounced by me in the open court on this 7th day of August 2025.

**District Munsif
Arni**

Both side Witness and Documents: - NIL

**District Munsif
Arni**