

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF, CHEYYAR

THIRUVANNAMALAI DISTRICT

Present :- **Tmt. K. Naleeni, B.com B.L (Hons), M.L.,**
Principal District Munsif, Cheyyar,
Thiruvannamalai.

Monday, the 07th day of July, 2025

I.A.No.03/2024 in O.S.No.82/2023

1. Elumalai
 2. Kanniyappan
- Petitioners/Defendants

V.

1. Murugammal
 2. Selvarani
 3. Shanthi
 4. Lakshmi
 5. Rajiv gandhi
- Respondents/Plaintiffs

This petition is coming before me on 01.07.2025 for final hearing in the presence of Thiru. T.P.Saravanan, learned Advocate for the Petitioners/Defendants and Thiru.D.Thangadurai, learned Advocate for the Respondents/ Plaintiffs and upon hearing both sides and after careful perusal of the entire case records and having stood over for consideration till this day, this Court delivered the following:

ORDER

This Petition has been filed under Order IX Rule 13 of Code of Civil Procedure, 1908 **to set aside** the Exparte Decree passed on 24.11.2023 and **to restore** the suit in O.S 82/2023 on the file of this Court.

2. BRIEF AVERMENTS OF THE PETITION AS FOLLOWS:

The Second Petitioner is the Second Defendant in O.S. No. 82 of 2023. The present petition has been filed by the 2nd Petitioner/ Defendant on behalf of himself and the 1st Petitioner/Defendant. The petitioner states that upon service of summons, the suit was posted on 29.09.2023 for the appearance of Defendants 1 and 2. However, as both the defendants were suffering from ailments, they were unable to appear before the Court on the said date. He further submitted that as he has been confined to his residence, he was unable to communicate with counsel or attend Court proceedings. Consequently, both Petitioners were called absent and an ex parte order was passed against them on 24.11.2023.

The petitioner further states that the non-appearance of the Petitioners was neither willful nor deliberate but was solely due to the genuine and unavoidable circumstances stated above. Due to the said circumstances, the petition to set aside the exparte decree could not be filed.

Hence, the present petition is filed under **Order IX Rule 13 of the Code of Civil Procedure, 1908**, seeking to set aside the Exparte Decree dated 24.11.2023 and to restore the suit to file.

3. BRIEF AVERMENTS OF THE COUNTER AS FOLLOWS:

The Respondents state that the petition filed by the Petitioner is false, vexatious, frivolous and is unsustainable either on law or on facts and is liable to be dismissed in limine.

The Respondent/Plaintiff states that the Petitioners/Defendants were very well aware of the suit filed against them. He further states that the summons was duly served to defendants and the suit was posted for their appearance on 29.09.2023. However on the said date, the defendants did not appear and hence, they were set exparte and subsequently, the suit was decreed

exparte on 24.11.2023.

The respondents further states that the Petitioners/Defendants have filed this petition **without giving proper and valid reasons** for not appearing in the Court on the above said date of hearing. He further contends that the petitioners had failed to appear as they will not succeed, if they contest in the suit. The respondents further states that the reasons stated by the Petitioners for their non-appearance is false and that the first Petitioner is doing agricultural work everyday and both the petitioners/defendants are physically fit. The Respondent states that the petitioners/defendants willfully not appeared before the Court and that they have filed this petition only to abuse the court.

The Respondent further states that the petitioner has filed the application with ulterior motive of delaying the proceeding and that the petition filed is highly vexatious and malafide. Hence, he prayed to dismiss the petition with costs.

4. POINT FOR CONSIDERATION:

The sole point to be considered by this Court is whether the present petition can be allowed or not?

5. ORAL AND DOCUMENTARY EVIDENCE:

No oral or documentary evidence was adduced on both sides.

6. DETERMINATION:

Heard both sides and Records perused.

On perusal of the records, it is seen that the Petitioners are the Defendant in the OS. 82/2023 on the file of the Principal District Munsif, Cheyyar. The Respondents who are the Plaintiffs have filed the suit for declaration and Permanent Injunction against the Defendants. Upon service of summons, the

suit was posted on 29.09.2023 for the appearance of Defendants 1 and 2. However, as both the defendants were not present before the Court on the said date, they were set exparte and consequently, the suit was decreed ex-parte on 24.11.2023.

The reason stated by the Petitioners for the delay is that, the 2nd petitioner owing to his own illness and the 1st Petitioner/1st Defendant unable to walk due to his old age and worn out of his legs, he was unable to appear before the Court on the above said date. However, as the Petitioners/Defendants have not appeared, the exparte decree was passed against them. The present petition has been filed under Order IX Rule 13 of the Code of Civil Procedure, 1908 to set aside the Exparte decree and to restore the suit to file.

As per Order IX Rule 13 of Code of Civil Procedure, 1908, an exparte decree shall be set aside by the Court provided sufficient cause is shown by the defendant for his non- appearance. It is seen from the records that the Petitioners/defendants had not appeared due to their illness. However, this Court finds that, the Petitioners have not produced any medical records to prove their claim nor they have examined themselves in order to prove the said contentions. It is also to be noted that there are objections from the Respondents side in allowing this Petition.

On careful perusal of both side contentions, this court sees that the Reasons stated by the Petitioners are found to be satisfactory. The petitioners have shown sufficient cause for their non-appearance. Even though the Respondent had raised objections to allow this Petition, this court considers that unless and until an opportunity is provided to present their case before this court, the matter in issue cannot reach its finality. Therefore, in the interest of justice and to avoid multiplicity of proceedings, this Court finds that an opportunity ought to be given to the petitioner by setting aside the exparte decree passed and to contest the claim against them. However, for the hardship caused to the respondents/Plaintiffs and for not preferring this petition in a

prompt manner, this court is inclined to allow this petition **with costs of Rs.750/- on or before 15.07.2025.**

Accordingly, the Exparte Decree dated 24-11-2023 is hereby set aside and the Original Suit in OS. No. 82 of 2023 is restored to file.

7. RESULT :

In the result, this Petition stands allowed on payment of costs of Rs.750/- to the Respondents on or before 15.07.2025. For reporting compliance of order by 24.07.2025.

Dictated by me to the Steno typist, directly typed by her, corrected and pronounced by me in open court, on this the 07th day of July, 2025.

(Sd/-K.Naleeni)

Principal District Munsif,
Cheyyar.

8. List of Witnesses:

On the side of the Petitioners : NIL

On the side of the Respondents : NIL

9. List of Documents :

On the side of the Petitioners : NIL

On the side of the Respondents : NIL

(Sd/-K.Naleeni)

Principal District Munsif,
Cheyyar.