

**IN THE COURT OF DISTRICT MUNSIF-CUM-JUDICIAL MAGISTRATE,  
KILPENNATHUR.**

**Present: M.C.Arun., LLB.,**

District Munsif-cum-Judicial Magistrate, Kilpennathur.

08<sup>th</sup> day of October, 2025, Wednesday.

**I.A.No.02/2025**

**in**

**O.S.No.160/2024**

1. Anthoniyammal,

2. Arokiyasamy

..Petitioners/2, 3<sup>rd</sup> Defendants

//Vs//

Chinnappan

..Respondent/Plaintiff

This Petition is coming before me on 1.09.2025 for final hearing in the presence of Thiru. K. Venkaviyarasan, learned counsel for the Petitioners/2, 3<sup>rd</sup> Defendants and Thiru. K. Muthuganesan, learned counsel for the Respondents/Plaintiff and upon perusing the case records having stood over for consideration till this day, this Court delivers the following;

**ORDER**

The petitioner namely Arokiyasamy filed a petition under Order 9 Rule 7 of CPC and prayed before this court to set aside the exparte order dated 29.01.2024 against this petitioner and one Anthoniyammal who is the wife of this petitioner.

**1. Crux of the Petition:**

The petitioner submits that he is the 3<sup>rd</sup> defendant and 1<sup>st</sup> Petitioner his wife and the respondent/Plaintiff file the suit against the petitioner/Defendant Partition of suit property and to allot 1/4th share each and further added that his wife Anthoniyammal's health became worst which resulted that they could not appear before this court on 29.01.2024 and the counsel for the petitioner informed them that exparte order was passed against them for non-appearance and further prayed that petitioners relies some important documents to succeed in the case and so prayed to allow this petition and to set aside exparte order dated 29.01.2024.

**2. Crux of the Counter:**

The respondent submits that the petition to set aside the ex parte order filed by the petitioner is not maintainable either in law or on facts and same to be dismissed at threshold and also deny all the fact except which are herein and respondent also denied the allegations that both petitioner are entitled  $\frac{1}{4}$  share each and also denied that petitioner could not appear this court due to illness of one Anthoniyammal and they came to about ex parte order through his counsel and the said allegation are false and imaginary one and further alleged the facts of the petitioners that they have important documents which are sufficient to prove their case is also false and prayed to dismiss the petition.

**3. Points for consideration is whether the petition can allowed or not?:**

Heard. Records perused. Petitioner filed the petition to set aside ex parte order against them stating that the petitioner Anthoniyammal was illness and so that they could not appear before this court and ex parte order was also came to know by the petitioner only by the counsel for the petitioner and so prayed to allow this petition. The counsel for the respondent argued that the reasons stated in the petition was not supported in the medical records and the said reason is false and imaginary one and prayed to dismiss the petition.

This court observed that ex parte order was passed on 29.01.2024 this petition was filed on 28.08.2025 and this petitioner only set ex parte and the suit is pending as against other defendant and so this court is of opinion allowing this petition will be fair. However, both petitioner was not filed by the petition very early and it has been taken for 7 months to file this petition and further since the suit being a partition suit, when the D2 and D3 (Petitioners) wantonly filed this petition in order to contest this case and so giving an opportunity for them is a principal of fair trial and so opportunity to the parties shall not be deprived of in the country which are ruled by law. Hence, this court is inclined to allow this petition with cost.

**In the result**, this petition is allowed with cost of Rs. 1000/- and same to be paid to the counsel for the plaintiff on or before 23.10.2025

Dictated to the Steno-Typist, directly typed and computerized by her, corrected and pronounced by me in the Open Court on this, the 08<sup>th</sup> day of October, 2025.

District Munsif-cum-Judicial Magistrate,  
Kilpennathur.

Petitioner side Evidence	: Nil
Petitioner side Document	: Nil
Respondent side Evidence	: Nil
Respondent side Document	: Nil

District Munsif-cum-Judicial Magistrate,  
Kilpennathur.