

**IN THE COURT OF THE II ADDITIONAL DISTRICT JUDGE,
TIRUCHIRAPPALLI**

**Present : Thiru B.Saravanan, B.Sc., B.L.,
II Additional District Judge, Tiruchirappalli**

Friday, the 21st day of June 2024

**Interlocutory Application No.12/2023
in
Original Suit No.177/2016**

Shivalingam, S/o. Late.Subramanian,
New No.4/105, Old No.3/389,
Kakkan Street, Santoshpuram,
Chennai 600073.

... Petitioner / 2nd Defendant

Vs.

1. Chitra
 2. Yogaeswaran
 3. Maheswaran
- 1 to 3 are residing at
Sedhurathinapuram,
Manapparai Town, Manapparai.
4. Palaniappan @ Vijay,
S/o. Late Subramanian,
Sandiagappar Bankers,
Sedhurathinapuram,
Manapparai Town, Manapparai.

... Respondents/ Plaintiffs

This petition came up before me on 18.06.2024 for final hearing in the
presence of Thiru.S.Kannan, counsel appearing for the Petitioner/ 2nd Defendant

and of Thiru. K.Anbazagan, counsel appearing for the Respondents/ Plaintiffs, upon perusing the petition, counter and documents on record and upon hearing the arguments of both sides, having stood over the consideration till this day, this court delivers the following,

ORDER

1) This petition filed by the Petitioner/ 2nd Defendant Under Order 9 Rule 7 of and Section 151 of Civil Procedure Code to set a side the exparte order passed against them in Original Suit No.177/2016 on 02.12.2021 and to receive the written statement.

2) The learned counsel for the Petitioner/ 2nd Defendant would submit that the Respondents/Plaintiffs has filed the suit for Partition and other reliefs. He further submitted that this case was posted on 02.12.2021 for filing written statement of the defendant side, suit summons has not been received by the Petitioner/ 2nd Defendant and he is not aware of the suit filed by the plaintiffs, Petitioner/ 2nd Defendant came to know the suit when he visited his home town last week and one of the relatives have asked about the status of the case, after that he checked through his advocate and on that date this court has set him exparte. He further submitted that now the petitioner has filed written statement and he is having valid defense in the suit, if this petition is not allowed, he will be put to irreparable loss and hardship. Hence he prays to allow this petition.

3) Per contra, the learned counsel for the Respondent/Plaintiff would submit that all the averments stated in the petition are denied as false and the reason stated in this petition is not correct, court summon served to the petitioner /2nd defendant , but he is avoid to receive it, petitioner/ 2nd defendant not mentioned the date he went to home town and the relatives name . Hence, he prays that the petition may be dismissed.

4) Both side heard and also perused the records.

5) The Respondents/Plaintiffs filed the suit for Partition and other reliefs. This case was posted on 02.12.2021 for filling written statement of the defendant, but he has not filed before this court, hence the Petitioner/ 2nd Defendants was set exparte in the suit on that date. Now the petitioner/ 2nd defendant has also filed his written statement. If the Petitioner/ 2nd Defendant is not given sufficient opportunity to contest the case, he will put to irreparable loss and hardship. On the other hand, the respondent will be compensated by way of cost. Hence this petition is liable to to be allowed on payment of cost.

6) In fine,

This petition will be allowed on payment of cost of **Rs. 1,000/-** (Rupees One thousand only) to be paid by the Petitioner/ 2nd Defendant directly to the Respondents/Plaintiffs on or before 27.06.2024, failing which this petition shall

stand dismissed automatically. For compliance of conditional order call on **27.06.2024 .**

Dictated to the Stenographer, typed by her directly in the Computer, corrected and pronounced by me in the open court, this the 21st day of June 2024.

**II Additional District Judge,
Tiruchirappalli.**

List of documents and witnesses on both side: Nil.

**II Additional District Judge,
Tiruchirappalli.**