

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

PRESENT: Selvi. **R.M. Subathra**, B.A.B.L.(Hons.), M.L.(IPR).,
District Munsif, Ponneri.

Wednesday, the 3rd day of April, 2019

I.A.No.286/2018

in

O.S.No.4/2013

1. S.R. Mohan
2. U. Hemalatha

...Petitioners/Defendants 8 and 9

-Vs-

1. P. Kumar
2. P. Kannan
3. K. Krishnamurthy
4. Ravi
5. Panneerselvam
6. G. Baskar @ Gouranga Naidu
7. G. Govindaraj
8. G. Duraibabu
9. G. Nanthini

10. Jeyanthi

...Respondents/Plaintiffs

This petition having been finally heard on 27.03.2019, in the presence of Mr. N.R. Rangarajan, learned counsel for the petitioners/ 8,9 defendants and Mr. T. Kumar, learned counsel for the respondents/Plaintiffs and upon hearing the arguments of both sides and after perusal of the entire records and having stood over for my consideration till this day, this court delivers the following :

ORDER

This is a petition filed under Order IX Rule 7 of Civil Procedure Code seeking to set aside the exparte order dated 10.09.2013.

District Munsif,

2. The averments set out in the petition affidavit filed by the petitioner are as follows:

a) The petitioners are the defendants 8 and 9 in the suit. The 2nd respondent/9th defendant is the daughter of 1st respondent/8th defendant. Due to the old age and weakness and continuous various illnesses, the petitioner could not contact their advocate for past 3 years and could contact him only on 20.06.2017. And when contacted the advocate had informed the petitioner that they have been set exparte for non filing of written statement. The petitioner would now file this written statement, hence the reason was neither willful nor wanton. Hence, this petition to set aside the exparte order dated 10.09.2013.

3. The averments set out in the counter filed by the respondents are as follows:

a) The respondent denied the entire allegation and stated that the reasons were all false. The petitioner have filed this petition only to delay the proceedings. The 1st petitioner/8th defendant had created false and fictitious settlement deed in favour of 2nd respondent/9th defendant. And to defeat the rights of plaintiffs. The petitioner had even after issuance of the prior suit notice the petitioner had not chosen to reply and even after file the suit for partition by respondent/plaintiff had not chosen to file written statement and remained exparte along with other defendant which clearly shows their evil intention to prolong the case. Thus the petition is filed written statement a vague excuse. Hence, this petition is to be dismissed.

4. Now the point for consideration is whether the petitioners are entitled to get the relief as prayed for?

5. On both sides no oral and documentary evidence was let in.

District Munsif,

6. Heard both sides. Perused the records. This is a petition to set aside the ex parte order dated 10.09.2013, made by the order of this Hon'ble Court for non filing of written statement. This petition has been filed belatedly and hence a petition to condone the delay, in filing the petition which was ultimately allowed by this court after which this petition came to be filed. No documents had been produced to show the kind of illness suffered by the petitioners and the period during which the petitioner suffered such alleged illness. This is a suit for partition which the respondent/plaintiffs had been fighting from 2013.

7. In a suit for partition to effectively decide the issues involved in the suit and to avoid multiplicity of proceedings, the court feels that the averment of the petitioner as defendants 8 and 9 would help in deciding the lis. But the absence of any material to support the reason in the affidavit, does not prove satisfactory to that court. Hence, the court in the interest of justice is inclined to allow this petition on payment of costs of Rs.500/- within 10 days from today.

In the result, this petition is allowed on payment of costs of Rs.500 /- being paid to the respondent, by the petitioner, within 10 days from the date of the order failing which the petition shall stand dismissed automatically. Call on 11.04.2019.

Order directly dictated to Steno-Typist, typed by him, corrected and pronounced by me in the Open Court on this, the 3rd day of April 2019.

**District Munsif,
Ponneri.**

District Munsif,

List of witnesses on the side of the petitioners
NIL

List of documents on the side of the Petitioners
NIL

List of witnesses on the side of the respondents
NIL

List of documents on the side of the respondents
NIL

**DM,
PNI.**

Fair/ Draft Order
I.A.No.286/2018
O.S.No.4/2013
Date:03.04.2019
DMC,PNI.

District Munsif,

