

**IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.**

**PRESENT: Selvi.A.Keerthana, B.A., L.L.B.,**  
**District Munsif, Ponneri.**

Thursday, the 04<sup>th</sup> day of December 2025.

**INTERLOCUTORY APPLICATION NO.3 OF 2024**

**IN**

**ORIGINAL SUIT NO.30 OF 2012**

Mr.Chelliah

.....Petitioner/3rd Defendant

-Vs-

1. Mr.K.Rajendiran

2. Mrs.D.Malliga

3. Mrs.D.Chandra

4. Mrs.E.Shanthi

.....Respondent's 1 to 4/Plaintiff's 1 to 4

5. Mrs.Papathiyammal (Died)

..... 5<sup>th</sup> Respondent/1st Defendant

6. Mr.Munusamy

.....6<sup>th</sup> Respondent/2nd Defendant

This petition coming on 14.11.2025 for final hearing before me in the presence of M/s Hasmukh S Surana, Learned counsel appearing for the petitioner and Mr.R.Sridar, Learned counsel appearing for the Respondents 1 to 4. The 6<sup>th</sup> respondent was set exparte. Upon hearing both sides, after perusing the material case records and having stood over for consideration till this day, this Court delivers the following:

**ORDER**

1. This petition has been filed under Order 9 Rule 13 r/w Section 151 of Civil Procedure Code to set aside the exparte decree dated 17.07.2023 passed in OS. No.30 of 2012.

2. **Brief averments of the affidavit filed by the petitioners are as follows:**

2.1. The petitioner submits that he is a senior citizen aged about 70 years and currently bedridden due to paralysis and other health issues, was unable to appear in the above suit due to his medical condition. The respondents/plaintiffs had filed the suit seeking relief for declaration, partition, and permanent injunction, and while the case was at the stage of cross-examination of PW-1, a notice for the petitioner's appearance was issued on 10.10.2022. However, due to the petitioner's ill health, the court was constrained to set the petitioner ex-parte on 19.12.2022, and the suit was subsequently decreed ex-parte on 17.07.2023. The petitioner submits that the respondents, by suppressing material facts and misrepresenting the situation, colluded amongst themselves to unlawfully invalidate the sale executed in the petitioner's favor by the 5th respondent.

2.2. The petitioner further states that due to his medical condition, his wife had been regularly appearing on his behalf before the court and following up with the previous lawyer. Unfortunately, due to her own health issues, the case went unrepresented, and the previous lawyer, after being handed the court notice dated 30.09.2022, failed to properly follow up on the matter. The petitioner's wife was only informed about the ex-parte decree when she met the previous lawyer after recovering, at which point the case was handed back to the petitioner. The petitioner was then introduced to the present counsel and advised to file an application to set aside the ex-parte decree. The necessary steps were taken to change counsel in August 2023 and to file this application without delay. The petitioner submits that there was no intentional delay in filing the application, and that the failure to appear was due to genuine, bonafide reasons. The petitioner has a strong case on merits, as the suit was filed by suppressing material facts and with dishonest intentions to mislead the court. In the interest of justice, the petitioner, thus, pleads for an opportunity to present his defense and prove his case before the court. If the ex-parte decree is not set aside, the

petitioner will suffer irreparable harm and monetary loss, which cannot be remedied later. Therefore, the petitioner prays for the ex-parte decree to be set aside in light of the circumstances mentioned above.

**3. Brief averments of the counter filed by the 1<sup>st</sup> respondent and adopted by the Respondents 2 to 4 are as follows:**

3.1. The respondents submit that the case has been pending for over 13 years due to the actions of the petitioner/defendant. The trial commenced on 31.01.2019, and the defendant delayed the proceedings for nearly three years. On 10.10.2022, the counsel for the 3rd defendant reported "no instruction" after partially cross-examining the witness. Despite court notices being sent to the defendants after the partial cross-examination, the defendant remained ex-parte even after receiving the notices. There was a period of about seven months between the date the defendant was set ex-parte and the date of the court notice. It is false to claim that the court notice served for the hearing on 10.10.2023 was handed over to the earlier counsel, who assured the petitioner that he would take care of the case. The earlier counsel who reported "no instruction" cannot reappear unless a fresh vakalat is filed. The story of the wife engaging the present counsel and the narrative of finding a new lawyer appear to be fabricated solely for the purpose of supporting the current application. There is no truth to these claims. It is also implausible to state that the petitioner/defendant had no knowledge of the ex-parte order from 20.02.2023 until the application to set aside the decree was filed.

3.2. While the petitioner/defendant claims to be bedridden, suffering from various health conditions, and paralyzed for a long time, these allegations appear to be fabricated for the purpose of the case. The petitioner/defendant has been closely monitoring the proceedings and has chosen to file the application within 30 days of

the decree dated 17.07.2023. However, the application was filed only after a delay of six months. The actions of the 3rd defendant appear to be a deliberate attempt to deceive the court. The petitioner, knowing he has no chance of succeeding in the case, has adopted various tactics to delay the proceedings and gain an advantage. The court is now being misused by the defendant to achieve his objectives and disrupt the legal process. Therefore, this petition should be dismissed.

4. The 6<sup>th</sup> respondent failed to file her counter in this petition and hence he was set ex parte on 11.03.2025.

5. **Evidence:**

Neither the petitioners nor the respondent has placed any oral or documentary evidence before this court.

6. **Point for determination :**

Whether this petition can be allowed or not?

7. **Discussion and findings:**

7.1. Heard. Records have been perused. The petitioner/3rd defendant has filed the present application seeking to set aside the ex-parte decree passed on 17.07.2023. The primary grounds put forth by the petitioner are based on his serious medical conditions, including paralysis and other health complications, which have left him bedridden and completely dependent on his family. He claims that, due to his ill-health, his wife had to take responsibility for attending court hearings and managing the case in his stead. Unfortunately, the previous counsel who was entrusted with the case reportedly failed to adequately follow up on the matter, ultimately resulting in the petitioner being set ex-parte by the court on 19.12.2022. Furthermore, the petitioner contends that he had no knowledge of the ex-parte order until mid-2023

when he finally engaged new counsel, who advised him to file the present application.

7.2. The respondents, however, oppose the petition on the grounds that the petitioner has delayed the filing of the application, arguing that the case has been pending for over 13 years and that the petitioner has been using various tactics to delay the proceedings. They also contest the petitioner's claims of ill-health, suggesting that these are fabricated to justify his failure to appear in court.

7.3. Upon careful consideration of the facts presented, it is evident that the petitioner, despite the serious health challenges he faces, made genuine attempts to follow up on the case through his wife and earlier legal counsel. While it is acknowledged that there was a significant delay between the ex-parte decree and the filing of this application, the court must also take into account the extraordinary circumstances surrounding the petitioner's condition. The petitioner's claims of paralysis and other health issues are plausible given the nature of the difficulties he faces, and there is no clear evidence to suggest that these claims are fabricated or exaggerated. The petitioner's situation, in all fairness, should be weighed against the fundamental principles of natural justice, which dictate that every party should be given a fair opportunity to present their case, especially when there are valid reasons for non-appearance. Moreover, it is seen that the present petition was filed on 16.08.2023, promptly after the passing of ex-parte decree on 17.07.2023. In light of the above, it is only just and equitable that the ex-parte decree dated 17.07.2023 be set aside, allowing the petitioner an opportunity to contest the suit and present his case before the court. Therefore, this court is inclined to allow this petition on terms considering the delay and expenses caused by the petitioner to the respondents/plaintiff on account of this petition.

8. **Result:**

In the result, this petition is allowed on following conditions:-

- (i) The petitioner/3rd defendant shall pay a sum of Rs.3000/- to the respondent/plaintiff on or before next date of hearing i.e. 18.12.2025.
- (ii) The petitioner/3rd defendant shall cross examine PW1 on the very same date, subject to appearance of PW1.

On failure to adhere the above conditions, this petition shall stand automatically dismissed without any further orders. For reporting compliance call on 18.12.2025.

Dictated by me to the steno-typist, who directly typed the same, corrected and pronounced by me in the open court, on this the 04<sup>th</sup> day of December 2025.

**DISTRICT MUNSIF  
PONNERI**

Both side witnesses and documents:- NIL

**DISTRICT MUNSIF  
PONNERI**

Fair/ Draft Order  
I.A.No.3/2024  
O.S.No.30/2012  
Date: 04.12.2025  
DMC,PNI.