

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

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

Friday, the 19<sup>th</sup> day of September 2025.

**I.A.Nos.8, 9, 10 and 11 of 2025**

**In**

**O.S. NO.130 of 2010**

1. Jayaraman (Died) (Amended as per order in IA.2/2019 dated 18.11.2019)  
2. Suresh  
3. Sudhakar ..... Petitioners/Defendants 2 & 3

Versus

1. Lalitha  
2. Gengammal  
3. Kantha  
4. Renuka @ Renuka Devi  
5. Saravanan (Died) (Amended as per order in IA.6/2024 dated 07.08.2024)  
6. Parimala  
7. Pattu ..... Respondents/Plaintiffs  
8. Saradhammal (died)  
9. Jayalakshmi  
10. Elumalai  
11. Suseela  
12. Savithiri  
13. Ravichandran  
14. Paarijatham (Amended as per order in IA.978/2015 dated 11.01.2016)  
15. Shanthi  
16. Kala  
17. Amudha (Amended as per order in I.A.2/2019 dated 18.11.2019)  
18. Kowsalya  
19. Gengammal  
20. Vasudevan  
21. Kumar  
22. Sankar  
23. Ravi  
24. Jeeva

- 25.Selvi
- 26.Renuga (Died) (Amended as per order in IA.6/2024 dated 07.08.2024)
- 27. Devaki
- 28.Ravakili
- 29.Punitha
- 30.Kannan
- 31.Hemavathi
- 32.Suresh (Amended as per order in IA.4/2023 dated 20.11.2023)

..... Respondents/Defendants 8 to 32

These petitions came up before me for final hearing on 12.09.2025 in the presence of Mr.G.Ilamurugu, Learned counsel for the petitioners/Defendants 2 and 3 and Mr.R.Maharajan, Learned counsel for the Respondents 1 to 7. The Respondents 8 to 32 were already set exparte in the suit, hence notice to them were dispensed with in this petition. Upon hearing both sides, on perusal of the material case records, this Petition and having stood over for consideration till this day, this Court delivers the following:

### **COMMON ORDER**

1. **I.A.No.8 of 2025**: This petition has been filed under Section 151 of CPC to condone delay of 23 days in representing the set aside petition.
2. **I.A.No.9 of 2025**: This petition has been filed under Order IX Rule VII of CPC to set aside the exparte order passed against Defendants 2 and 3 dated 12.02.2025 in OS.No.130 of 2010.
3. **IA.10 of 2025**: This petition has been filed under Section 151 of CPC to reopen the evidence of PW2 for cross examination in OS.No.130 of 2010.
4. **I.A.No.11 of 2025**: This petition has been filed under Order XVIII Rule XVII of CPC to recall the evidence of PW2 for cross-examination in OS.No.130 of 2010.

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

5.1. The petitioners are the defendants 2 and 3 in the suit. The suit seeking for a relief of partition of the property, which belongs to absolutely without impleading the necessary and proper parties. In response, the defendant filed a written statement, and issues were framed. The plaintiff was examined as PW1 and cross examined by the defendants. The examination of PW1, the plaintiff filed multiple applications seeking to implead additional parties, which were allowed by this court. Furthermore, the plaintiff failed to take the necessary steps to bring on record the legal representatives of the deceased 4<sup>th</sup> defendant which has caused confusion and further delays. The steps for bringing the legal heirs of the deceased defendant on record were still pending, and the case has not reached a stage where the cross-examination of parties was immediately necessary.

5.2. The petition to set aside the order was filed on 17.02.2025. Thereafter the petition was returned on 18.02.2025 for compliance. After rectifying the defects, the papers ought to have been represented on 23.04.2025. The petition had been returned once again, due to inadvertence and oversight we were unable to represent the papers within the stipulated time. The delay of 23 days has occurred in representing the above set aside petition papers.

5.3. On 12.02.2025 the defendant set ex-parte for non-appearance. It is important to note that the defendant was not given an opportunity to attend the proceedings due to the absence of his counsel, who was engaged before the Hon'ble High Court at Madras. As a result, the defendant's counsel was unable to appear before this court leading to the closing of the cross-examination of PW2. The exparte order was passed without proper verification of the facts, including the absence of the defendant's counsel and the pending steps to bring on record the legal heirs of the deceased defendant. The failure to take steps regarding the death of D4 further contributed to the confusion surrounding the proceedings. The recalling the evidence

of PW2 for cross-examination will ensure that the defendant is able to effectively challenge the plaintiff's case and ensure a fair trial. Hence this petition.

**6. Brief averments of the counter filed by the 1<sup>st</sup> respondent and adopted by the respondents 2 to 7 are as follows:**

6.1. The Respondents submits that the 4<sup>th</sup> defendant Saradammal died during the pendency of suit, the legal heirs are already made as defendants. After recording the death case was posted for filing steps, due to inadvertence the steps was omitted to file into court, on verification of records this court was pleased to direct the respondents/plaintiffs to file necessary steps to amend the plaint. The petitioners/ 2 and 3 defendants not filed any objection in I.A.7/2025 they are not appear before this court and they are called absent and the petition was allowed, and posted for further plaintiff side evidence on 24.01.2025 and one more witness proof was filed as PW2 namely Vasudevan and recorded and posted for cross of PW2 by defendants 2 and 3 on 12.02.2025 inspite of several chance they are not appear and called absent and set exparte and PW2 evidence was closed and posted for further witness and on 17.07.2025 the plaintiff counsel endorsed as no further evidence.

6.2. Subsequently posted for exparte argument on 30.07.2025 on the day the Respondents/Defendants 2 and 3 filed application to setaside the exparte order and recall the PW2 evidence the very same petition was returned on 04.08.2025 and posted for argument on 06.08.2025 subsequently the very same petition was filed the Respondents/Defendants 2 and 3. The plaintiffs are ready to argue the case the defendants 2 and 3 filed petition. The petition to recall of PW2, without petition to reopen the evidence of PW2. When once the evidence is closed the petitioner should have been filed for reopen and recall of evidence, the reopen petition is necessary under Civil Rules of Practice without re-open the evidence of PW2 the petitioner is not entitled to recall the evidence of PW2. The allegations in the affidavit are vague and there is no reason to setaside the exparte order for non-cross examination of PW2. Hence to dismiss the petition with costs.

**7. Evidence :**

Neither the petitioners nor the respondents have placed any oral or documentary evidence before this court.

**8. Point for determination :**

Whether this petition can be allowed or not.

**9. Discussion and findings :**

The present petitions have been filed to condone the delay of 23 days in representing the petition to set aside the ex parte order, along with the petition to set aside the ex parte order itself. The petitioners have also sought to recall the evidence of PW2 for the purpose of cross-examination and to reopen the case for that purpose. As all the above petitions are supported by a common affidavit and a common counter has been adopted by the respondents, this Court, in order to avoid multiplicity and save judicial time, is inclined to dispose of them by way of a common order. The petitioners herein are the 2nd and 3rd defendants in the suit filed for partition. It is the case of the petitioners that they were set exparte on 12.02.2025 for non-appearance at the stage of cross-examination of PW2. It is further submitted that their failure to take appropriate steps in respect of the deceased 4th defendant led to confusion and contributed to their absence. Hence, the present petitions have been filed seeking to set aside the exparte order, to recall the evidence of PW2 for cross-examination, and to reopen the case. This Court is of the view that the petitioners ought to be given an opportunity to cross-examine the witness in order to effectively present their case. Considering the counter filed by the respondents and the reasons putforth by the petitioners, this Court is inclined to allow the present petitions. However, in order to compensate for the delay caused, considering the age of the suit, the petitioners shall pay a sum of Rs.2,000/- to the respondents/plaintiffs.

10. **RESULT :**

**I.A.No.8 of 2025** : In the result, this petition is allowed subject to the condition that the petitioners shall pay a sum of Rs.500/- to the respondents failure of which, this petition shall be dismissed automatically without any further orders.

**I.A.No.9 of 2025** : In the result, this petition is allowed subject to the condition that the petitioners shall pay a sum of Rs.500/- to the respondents failure of which, this petition shall be dismissed automatically without any further orders.

**I.A.No.10 of 2025** : In the result, this petition is allowed subject to the condition that the petitioners shall pay a sum of Rs.500/- to the respondents failure of which, this petition shall be dismissed automatically without any further orders.

**I.A.No.11 of 2025** : In the result, this petition is allowed subject to the condition that the petitioners shall pay a sum of Rs.500/- to the respondents failure of which, this petition shall be dismissed automatically without any further orders.

Dictated by me to the stenographer, transcribed by her, corrected and pronounced by me in the open court, on this the 19<sup>th</sup> day of September 2025.

**DISTRICT MUNSIF  
PONNERI**

**Both side witnesses and documents:- NIL**

**DISTRICT MUNSIF  
PONNERI**

Common Fair/ Draft Order  
I.A.Nos.8, 9, 10 & 11/2025  
O.S.No.130/2010  
Date: 19.09.2025  
DMC, PNI.