

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

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

Wednesday, the 28th day of January 2026

I.A.No.5 of 2025

In

I.A.No.4 of 2024

In

O.S.No.121 of 2008

T.C.Venkatesh @ Gowrishankar

.....Petitioner/Petitioner/3rd Defendant

-Vs-

1. S.Pachaikani Nadar (Deceased)

2. Maharajan

3. Shanmugasundaram

4. Rajakani

5. Shantha

6. Vijaya

.....Respondents/Plaintiffs

7. The District Collector, Thiruvallur District.

8. The Tahsildar, Ponneri Taluk.

9. P.Thiruvengadam

..... Respondents/Defendants 1, 3 and 4

This petition came up before me for final hearing on 20.01.2026 in the presence of Mr.R.R.Mohanaraja, learned counsel for the petitioner and Mr.N.R.Gopaalan, learned counsel for the Respondents 2 to 6. The Respondents 7 and 8 endorsed “No counter” to this petition. The 9th Respondent was already given up in IA.4 of 2024. Upon hearing the arguments made by the learned counsels for the petitioner and the respondents, and on perusal of the material case records, this Petition having stood over for consideration till this day, this Court delivers the following:

ORDER

1. This application is filed under Order 9 Rule 9 of Civil Procedure Code to set aside order of dismissal dated 21.03.2025 as against the petitioner/Defendant passed in IA.No.4 of 2024 in OS.No.121 of 2008 and restore the suit.

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

2.1. The petitioner herein is the 1st defendant in the suit. The plaintiff submit that one Pachaikanni Nadar had filed the suit seeking declaration declaring the act of the 2nd defendant in having transferred the patta in respect of the suit lands in favour of the third defendant is invalid and illegal and consequently restraining the 2nd defendant from making any further transfer of patta in respect of any of the suit lands and for a mandatory injunction directing the 2nd defendant to restore the patta in the name of the plaintiff for other reliefs as against the petitioner as well as the other defendants herein. The receipt of the summons, he had filed vakalath through the petitioner counsel on 21.07.2008. Due to the petitioner ill health and family situations, the petitioner unable to approach counsel for filing the written statement on time. The petitioner failed to appear before this court on 24.03.2009 and subsequent proceedings. Consequently it is brought to knowledge through reliable source that he was set exparte by this court in the above suit an order dated 24.03.2009.

2.2. The petitioner have filed written statement along with set aside application in the case. The respondent/plaintiff also filed their counter, he had filed the I.A.No.4 of 2024 in OS.121 of 2008 was filed before this court to set aside the exparte order passed. Upon filing the counter by the plaintiff, the case was posted for enquiry 21.03.2025. The counsel was met with an accident on 20.03.2025, hence he was not able to appear before this date of hearing i.e. 21.03.2025. It is pertinent to point out here that the petitioner counsel has always been attending this court on each and every hearing, his absence on 21.03.2025 is neither willful nor wanton for the reasons

stated above. if the application is not allowed, he will be put to irreparable loss and hardship which could not be compensated in terms of money on the other hand no prejudice will be caused on the Respondent and it is just and necessary to allow this petition to proceed the case in the interest of justice. Hence this petition.

3. Brief averments of the counter filed by the 3rd Respondent and adopted by the Respondents 2 and 4 to 6 are as follows:

The respondents submit that the IA.No.4 of 2024 was filed to set aside the exparte order dated 24.03.2009. In IA.No.4 of 2024 itself was filed nearly 15 years after the date of the exparte order. It is pertinent that the suit has proceeded in the absence of the petitioner and even arguments were advanced in this suit after the closing of the evidence on either side. The petitioner was never diligent in defending the suit. In IA.No.4 of 2024 was dismissed for default on 21.03.2025 because the petitioner was not present and as there was no representation in the court on his behalf. This application IA.No.5 of 2025 is to restore IA.No.4 of 2024. The reason that the counsel of the petitioner met with an accident and hence the counsel did not appear on the date of hearing is not true and is not acceptable. No proof has been placed to prove the alleged accident. Even otherwise there is no explanation as to why the petitioner did not appear in the court. The facts in this case show that the petitioner has shown supine indifference in defending the suit. Hence, the respondents pray that this petition is liable to be dismissed.

4. Evidence :

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

5. Point for determination :

Whether this petition is to be allowed or not.

6. Discussion and Findings :

6.1. Heard. Records perused. Upon careful consideration of the materials available on record, it is seen that the present application has been filed by the petitioner/first defendant seeking restoration of the application filed by him in I.A. No. 4 of 2024 in O.S. No. 121 of 2008, which was dismissed for default at the stage of enquiry. The dismissal occurred due to the non-appearance and lack of representation on behalf of the petitioner when the application was posted for enquiry.

6.2. It is not in dispute that the suit in question of the years 2008 and have been pending for a considerable length of time. The delay occasioned due to the absence of the petitioner and his counsel has contributed to the protraction of the proceedings. However, this Court is also mindful of the settled principle that procedural lapses should not ordinarily defeat substantive rights, and that matters ought to be decided on merits rather than on technical grounds, unless gross negligence or deliberate inaction is established.

6.3. Considering the nature of the relief sought in the original suits, and in order to ensure a fair and complete adjudication, this Court is of the view that the petitioner ought to be granted one final opportunity to prosecute the matter. The filing of the present restoration petition indicates the petitioner's intention to pursue the proceedings and have the issues decided on merits.

6.4. At the same time, this Court cannot lose sight of the fact that the suits are long pending and that the earlier absence of the petitioner has caused delay and inconvenience to the respondents. Therefore, in order to balance the equities and to compensate the respondents for the delay caused, this Court deems it appropriate to allow the present restoration application subject to payment of costs.

6.5. In view of the above facts and circumstances, and in the interest of justice, the present application is allowed with costs.

7. Result:

In the result, this petition is allowed on twin conditions:

- (i) The petitioner shall pay costs of Rs.500/- to the respondents/plaintiffs on or before 03.02.2026.
- (ii) The petitioner shall conduct their enquiry on the very same day. For reporting compliance. Call on 04.02.2026.

Dictated by me to the steno-typist, directly typed by her in her desktop, corrected and pronounced by me in the open court, on this the 28th day of January 2026.

**DISTRICT MUNSIF
PONNERI**

Both side witnesses and documents:- NIL

**DISTRICT MUNSIF
PONNERI**

Fair/ Draft Order
I.A.No.5/2025
O.S.No.121/2008
Date:28.01.2026
DMC,PNI.