

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

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

Thursday, the 17th day of July 2025.

I.A.No.12 of 2025

In

O.S. NO.58 of 2009

Sargunam

..... Petitioner/1st Defendant

Versus

1. Selvi @ Selvanayagi

2. Balan @ Balakrishnan

3. Komalanathan (died)

4. K.Pangajavalli

5. K.Vimalanathan

6. K.Loganathan

7. K.Karthiyaini

..... Respondents/Plaintiffs

8. Palanivel (died)

9. Vijaya @ Vijayalakshmi

10. P.Nithyanadam

..... Respondents/Defendants 2 to 4

This petition came up before me for final hearing on 10.07.2025 in the presence of Mr.A.Devendran, Learned counsel for the petitioner/1st defendant and Mr.R.Rajesh Khanna, Learned counsel for the Respondents 1, 2, 4 to 7. The Respondents 9 and 10 were set exparte in the suit and hence notice to them in this petition were dispensed with. 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:

ORDER

This petition has been filed under Order 9 Rule 7 of CPC to set aside the exparte orders passed against the petitioner/1st defendant on 01.04.2025.

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

The petitioner herein, who is the first defendant in the suit, respectfully submits that when the matter was posted for marking of documents by the plaintiff on 01.04.2025, he was unable to appear before this Court or communicate with his counsel due to illness. In these circumstances, an ex parte order was passed against the petitioner on 01.04.2025. The petitioner submits that his absence was neither willful nor wanton but solely due to ill health. He further states that if the ex parte order is not set aside, he will suffer serious hardship and irreparable loss. Hence, this petition.

3. Brief averments of the counter filed by the 1st respondent and adopted by the 2, 4 to 7 respondents are as follows:

The respondents submit that the reason stated in the petition namely, that the petitioner was unable to appear before this Court on 01.04.2025 due to ill health and therefore could not meet the counsel is hereby specifically denied. The petitioner/first defendant is put to strict proof thereof. It is further submitted that the petitioner/first defendant is deliberately attempting to delay the proceedings by putting forth such reasons in support of the present application to set aside the ex parte order. The respondents categorically deny all the allegations contained in the affidavit filed in support of the petition. The petition is based on false and untenable claims, and the petitioner is put to strict proof of each and every averment made therein. It is therefore submitted that the petition has been filed solely with the intent to protract the proceedings and is liable to be dismissed with costs.

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 can be allowed or not.

6. **Discussion and findings** :

6.1. Heard the arguments advanced by both sides. Records have been duly perused. Upon consideration of the rival contentions, it is observed that the petitioner herein, who is the first defendant in the suit, was set ex parte by an order dated 01.04.2025. The petitioner attributes his absence to illness; however, no medical or other supporting documents has been filed to substantiate this claim. Conversely, the respondents have categorically denied the averments made in the petition, stating that they are false and without merit.

6.2. Upon weighing the submissions, this Court is of the view that, in order to ensure a fair trial and in adherence to the principles of natural justice, it is just and necessary to afford both parties the opportunity to contest the suit. An ex parte order is a serious procedural measure, as it deprives a party of the right to participate in the adjudication process. While litigants are indeed expected to act with due diligence, a lapse that is not willful should not be met with disproportionate consequences. Denying a party the opportunity to be heard at the outset would undermine the possibility of a comprehensive of the rights involved in the suit property. That said, the petitioner's lack of diligence has undeniably resulted in delay and has caused the respondents to expend time and resources in opposing this application. Accordingly, the equities of the case must be carefully balanced.

6.3. With the above background, this court is inclined to allow the petition. However, to compensate for the delay and the efforts of the plaintiffs/respondents, the following conditions are imposed.

7. **RESULT :**

In the result, this petition is allowed subject to payment of costs of Rs.2000/- payable by the petitioner to the District Legal Service Authority, Tiruvallur on or before next hearing. On failure of which, this suit 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 17th day of July 2025.

**DISTRICT MUNSIF
PONNERI**

Both side witnesses and documents:- NIL

**DISTRICT MUNSIF
PONNERI**

Fair/ Draft Order
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Date: 17.07.2025
DMC, PNI.