

IN THE COURT OF THE DISTRICT MUNSIF, TIRUTTANI

Present : **Tmt. S. KAVIPRIYA, B.A., LLB.,**  
District Munsif, Tiruttani

Dated this Saturday the 5<sup>th</sup> Day of December 2020

IA.No.1 OF 2019 IN IA.No.638 OF 2018

IN

OS. No.85 OF 2018

...

1. Kiliyammal (died)

(Amended as per order in IA.No.1/2020, dated 03.01.2020)

2. Eswari @ Devi

...Petitioners/ defendants 1 and 2

/vs/

Periabban

...Respondent / Plaintiff

This petition came up before me for the final hearing on 05.12.2020 in the presence of M/s. P. Kuppan, B. Jamuna, and B. Radhika, Counsels for Petitioners/ defendants 1 and 2 and M/s. P.C. Santhya Rani, Counsel for 1<sup>st</sup> Respondent/ Plaintiff, and having stood over for consideration till this day, this court delivered the following:-

**ORDER**

1. This petition is filed under order 9 rule 7 of CPC to set aside the exparte order dated 03.01.2019.

**Petition in brief are as follows:-**

2. The respondent/plaintiff had filed the above suit for declaration and for consequential injunction against the petitioners and the same is pending before this court for filing written statement of defendants. And also the

respondent/plaintiff had filed a petition for seeking ad-interim injunction order against the petitioners 1 and 2. In the above petition the petitioners have been called absent and set exparte on 03.01.2019. In the above petition in IA.No.638/2018 the petitioners received the notice from this court for their appearance. In mean time, the 1<sup>st</sup> petitioner namely Kiliyammal who was suffering from jaundice in the month of December 2018 to till 15.03.2019 and she was taking native treatment and so, the petitioners have to be attended on her. So the petitioner could not appear before this court in person or to file Vakalat on their behalf. The petitioners' absence on 03.01.2019 was neither willful nor wanton but beyond their control. They have got good case on merit. Hence, the court may be pleased to set aside the exparte order dated 03.01.2019.

**Counter in brief are as follows:-**

3. The petition is not maintainable either in law or on facts. The respondent purchased the schedule property from one Durai, S/o. Chittirai under a registered sale deed dated 21.10.1991 and he is in actual possession and enjoyment of the suit property by constructing a house for the past 20 years these petitioners know very well. The respondent sent suit summons and notice to the petitioners but they were called absent and set exparte on 03.01.2019. Because they did not want to conduct the case. They know that the respondent is a lawful owner and they did not have nay right or title. They filed this petition only after thought and reason stated one is utter false. There is no bonafide reasons and the one stated is false. Hence, prays for dismissal of the petition with costs.

**Point for determination:-**

4. Whether the petitioner is entitled to the relief as sought for?

5. The petitioners filed this petition under Order 9 Rule 7 CPC stating reason that the 1<sup>st</sup> petitioner namely Kiliyammal who was suffering from jaundice in the month of December 2018 to till 15.03.2019 and she was taking native treatment and so, the petitioners 2 and 3 have to be attended on her. So the petitioner could not appear before this court in person or to file Vakalat on their behalf and they were called absent and set exparte on 03.01.2019. Thereafter, the petitioner filed this petition on 27.03.2019 for which there is a delay of 83 days. As per Order 9 Rule 7 petition to be filed on or before 10.01.2019 next hearing. But the petition filed only after 83 days prior to Covid - 19. There is 3 years limitation for Order 9 Rule 7 CPC under article 137 of limitation act. Therefore, the petition filed in time.

6. Considering the above facts and circumstances, this Court being the Court of first instance, should give equal opportunity to both side for adjudicating the dispute on merits. This court is of view that in the interest of justice to provide the petitioners an opportunity to prove their case, to prevent multiplicity of proceedings and for proper adjudication of the case, this petition has to be allowed on costs.

**In the result, the petition is allowed on costs of Rs.250/- to respondent. Cost to be paid on or before 11.12.2020 failing which this petition shall stands dismissed. Call on 11.12.2020.**

Dictated to Steno – Typist, computerized by her directly, corrected and pronounced by me in open court, this the 5<sup>th</sup> day of December 2020.

Sd/- S. Kavipriya  
District Munsif,  
Tiruttani.

**Both side witness and Exhibits:- NIL**

Sd/- S. Kavipriya  
District Munsif,  
Tiruttani.

