

**IN THE COURT OF THE II ADDITIONAL DISTRICT JUDGE,
THOOTHUKUDI.**

Present: Tmt. M.Breetha, M.L.,
II Additional District Judge,
Thoothukudi.

Tuesday, this the 25th day of March 2025

I.A. No. 2/2024
in
O.S. No. 163/2023

1) Eenthadimuthu (Died)

2) Nainar

3) Ammachar

.. Petitioners / 2, 3 Defendants

/Vs/

1) Manoharan

2) Kailasakani

3) Santhanamari

..Respondents/Plaintiffs

(2, 3 plaintiffs represented by its power agent 1st plaintiff)

This petition is coming before me for final hearing on 20.01.2025 in presence of Thiru.I.Abuthahir, Learned Advocate for Petitioners/2, 3 Defendants and Thiru.P.Swamy Ayyah, Learned Advocate for Respondents/Plaintiffs and upon hearing both side arguments and on perusal of records and having stood over till this day for consideration of this court, this court delivers the following:

ORDER

1) This petition has been filed by the petitioners under Order 9 Rule 7 of C.P.C. to set aside the exparte order passed against the petitioners/2, 3 defendants in

the main suit on 08.03.2024.

2) Brief averments of the petition and affidavit:

The petitioners are the defendants 2 and 3 in the main suit and has averred that the main suit was filed seeking relief of partition and to declare the sale deed executed by the 1st defendant as null and void and suit was posted on 08.03.2024 for filing written statement and that the 2nd defendant is conducting the suit proceedings on behalf of the 3rd defendant and that as was ill and suffered from diarrhea, he was not able to appear before the court and therefore he was called absent and had been set exparte on 08.03.2024 and that when he met his advocate, he came to know about the above said exparte order and hence constrained to file this petition and prays to allow the same.

3) The contentions of the counter filed by the respondent:

The respondent has denied all the averments made in the petition and has contended that the reasons stated in the petition are not genuine and that the reason stated by the 2nd defendant for not filing the written statement is not satisfactory and that the 2nd defendant deliberately failed to proceed with the case and prays for dismissal of the same with costs.

4) The point for consideration is whether this petition can be allowed or not?

5) Both sides are heard. Records have been perused. The petitioners are the defendants 2 and 3 in the suit. The suit stood posted for filing written statement on

08.03.2024. Inspite of sufficient opportunities, the defendants 2 and 3 failed to file written statement and therefore, the defendants 2 and 3 were called absent and had been set exparte. The reason stated by the petitioner for non appearance has been objected by the respondent.

6) The petitioners are the defendants 2 and 3 in the main suit. Being the defendants in the suit, this court is of the view that one more fair opportunity shall be given to them to defend his case. At the same time, while considering the hardships caused to the respondents, this court is of the view that the hardships caused may be compensated by terms of costs. Therefore, for the above said reasons and in the interest of justice, this petition stands allowed on condition of payment of costs.

7) In the result, this petition stands allowed on condition that the petitioners shall pay a cost of Rs.1000/- (Rupees One Thousand only) to the respondents on or before 17.04.2025; failing which, this petition stands automatically dismissed. Call on 17.04.2025.

Dictated to the Steno-typist, typed by her, corrected and pronounced by me in open Court, this the 25th day of March, 2025.

Sd./M.Breetha,
II Additional District Judge,
Thoothukudi.

**Draft/Fair Order
I.A. No. 2/2024
in
O.S. No.163/2023
Dated: 25.03.2025**