

In the Court of the Principal District Judge, Villupuram

**Present : Thiru. A. Manimozhi, B.A., LL.B.,
Principal District Judge.**

Wednesday, the 19th day of November 2025

I.A. No.7/2025

in

O.S. No.24/2022

...

1. Jayalakshmi
2. Rajeswari
3. Kothainayagi
4. Manikandan ... Petitioners/Defendants 1, 3, 4, 5

/Vs/

1. Hemalatha ... 1st Respondent/Plaintiff
2. Sasikala ... 2nd Respondent/2nd Defendant

This Petition is coming on 29.10.2025 before me for final hearing in the presence of Tr.K.Shankar, Advocate for the Petitioners; and Tr.A.Sasikumar, Advocate for the 1st Respondent; and Tr.K.Elavarasan, Advocate for the 2nd Respondent, and counter not filed, 2nd Respondent was called absent and set exparte; and having heard the oral arguments on the side of the Petitioners; and on perusal of the written argument filed on the side of the 1st Respondent; and on perusing the records and having stood over for consideration till this day, this court passed the following...

I.A.No.7/2025 in O.S.No.24/2022 Prl. District Court, Villupuram, dt.19.11.2025

ORDER

The Petitioners/Defendants 1, 3, 4, 5 have filed the present application under Order 9 Rule 7 of CPC., seeking to set aside the exparte order passed against them on 08.06.2022, 29.07.2022 and 19.01.2024, respectively and to permit them to participate in the further proceedings in the suit.

2. (a) The case of petitioners is that, the 1st Respondent/Plaintiff filed the above suit against them and against the 2nd Respondent/2nd Defendant on the basis of a fabricated Promissory note and the suit is pending now in the stage of 2nd Defendant's side evidence.

(b) Summon was served in the suit to the 1st Petitioner and the 4th Petitioner for the hearing date 08.06.2022. The 1st Petitioner is the mother of other Petitioners, and she was undergoing treatment for Covid-19 from even prior to the said date. The Petitioners 2 and 3, who are the sisters of the 4th Petitioner were residing in other places. There was no one to look after the 1st Petitioner and so the 4th Petitioner being the son had to take care of the 1st Petitioner. He is the only male member in the family. The Petitioners 1 to 3 did not have sufficient knowledge on law and they are being women were depended on the 4th Petitioner and as such, they have nominated the 4th Petitioner to look after the case.

(c) On 08.06.2022, the 4th Petitioner was unable to appear before the Court. The 1st Petitioner was also suffering from Blood pressure, Diabetics, and Heart disease. She was also unable to appear before the Court. Their absence was only due to the illness of the 1st Petitioner.

(d) The name of 2nd Petitioner is 'Gangi Subramanyam Rajeshwari'. But, the 1st Respondent had mentioned her name only as 'Rajeswari' in the suit. The name of the 3rd Petitioner is 'Kothainayagi'. But the 1st Respondent mentioned her name as 'Kotainayagi'. They were not properly served with summons. They were not aware of the suit proceedings. So, they were not able to appear before the Court and their absence is neither willful nor wanton. They came to know about the suit only from the 4th Petitioner.

(e) The Petitioner had already filed O.S.No.172/2019 against the 2nd Respondent for Partition and other reliefs and the said suit is pending on the file of this Hon'ble Court. The Petitioners have engaged the same counsel for both the suits. However, their previous counsel has not properly followed this case and the Petitioners came to know about the exparte order only after engaging the present counsel. Hence, the exparte order passed against them has to be set aside. Hence, the petition.

3. (a) The case of 1st Respondent/Plaintiff as per Counter Statement is that, the Petitioners have not shown any good cause for their default. The Petitioners have failed to produce any medical records to prove the alleged illness of the 1st Petitioner.

(b) In O.S.No.172/2019, the name of 3rd Defendant is mentioned as 'Rajeswari'. Her family members always introduced her to the 1st Respondent as 'Rajeswari' and not as 'Kanchi Subramaniam Rajeswari'. The 3rd Defendant was given opportunity to file Written Statement. She has not shown any good cause for her failure. The Private notice taken to the 4th Defendant was returned as unclaimed. The omission of letter 'h' in the name of 4th Defendant was a clerical or typographical error and not a deliberate act. The suit is in the stage of evidence on the 2nd Defendant's side. PW1 and PW2 were examined on the Plaintiffs' side and fully cross examined by the 2nd Defendant. Permitting the Petitioners to re-enter into the proceedings at this stage would cause prejudice to the Plaintiffs and delay the final adjudication of the suit. Hence, the petition is liable to be dismissed with costs.

4. In the enquiry, no witness was examined and no document was marked on either side.

5. Heard both sides and perused written arguments filed on the side of the 1st respondent and other records.

6. The point for consideration is :-

Whether the exparte order passed against the petitioners is to be set aside and this petition has to be allowed?

7. Answer to the Point :-

The petitioners are defendants 1, 3, 4 and 5 in the above suit. Defendants 1 and 5 were duly served in the suit, called absent and set exparte on 08.06.2022. Summon sent to 3rd defendant was returned as “door locked copy affixed”, private notice to D3 was effected. Service was held sufficient and D3 was called absent and set exparte on 29.07.2022. Summons to D4 could not be served. Substituted service was ordered. Paper publication effected and D4 was called absent and set exparte on 19.01.2024. 1st defendant is the mother of other defendants, D2 is contesting the suit. Two witnesses have been examined on the plaintiff side, cross examined by D2 and suit now stands posted for evidence of the 2nd defendant’s side.

8. Submissions :

(a) The learned counsel for the petitioners contended that 1st defendant was ailing from Covid 19 after effects, blood pressure,

diabetics and heart disease. She was unable to appear before the court. The 5th defendant has to take care of her, so he was unable to appear before the court. Summons was not properly served to defendants 3 and 4. Their names have not been mentioned correctly in the suit. The previous counsel of the petitioners did not follow the case properly. The suit has been filed by fabricating the promissory note. Hence, opportunity may be given to the petitioners to contest the suit. The petition may be allowed on terms. As such, he prayed to allow this petition.

(b) The learned counsel for the 1st respondent/plaintiff contended that the petitioners have not shown any good cause to allow this petition. Medical records has not been filed to prove the illness of 1st defendant. The Period of illness, and treatment details have not been pleaded. The 3rd defendant was introduced to the plaintiff only as 'Rajeswari' and her name is mentioned as only 'Rajeswari' in O.S. No.172/2019 by the petitioners themselves. The mistake occurred in the name of D4 is only a type error and the same was neither willful nor wanton. The petitioners have been fully aware about the suit proceedings. Their intention is to delay the matter and filed this petition at the belated stage. As such, he prayed to dismiss the petition.

9. Discussion :

(a) There is no dispute that the petitioners 1 & 4 (D1 & D5) have been duly served with summons in the suit. The other two petitioners are the daughters of the 1st petitioner and they are in good terms with each other. Therefore, the stand taken by the petitioners that D3 and D4 were not aware about the suit, is not at all acceptable. The petitioners have not produced any medical record to prove the alleged illness of the 1st petitioner. The 4th petitioner is admittedly looking after the suit proceedings. As rightly contended by the learned counsel for the 1st respondent, no good cause has been either pleaded nor proved to justify the absence of the 4th petitioner.

(b) Admittedly, the petitioners as plaintiffs have been prosecuting another suit in O.S. No.172/2019 during the relevant period before the same court. The petitioners also claim that they engaged the same counsel to follow both the suits. The reason stated that their previous counsel did not follow this case properly, cannot be a acceptable reason. There is also no pleadings as to when the petitioners came to know about the exparte order. As such, the reasons stated by the petitioners appears to be neither sound nor acceptable. However, the settled principle of law is that an exparte order can be set aside if the defendants assign sufficient

cause for their absence, and ordinarily an opportunity must be afforded to contest the matter unless malafides or deliberate negligence is apparent.

(c) In the present case, though no medical records have been filed, the reasons assigned by the petitioners, coupled with the fact that they are actively prosecuting the partition suit against the 2nd defendant in the same court, indicate that their absence might not be intentional and further the manner of service of summons upon the defendants 3 & 4 would also require consideration. Further, to prove their bonafide, the petitioners have enclosed the written statement along with this application. Merely, on the ground of delay and technicalities, this petition need not be rejected. The petitioners have to be given a final opportunity to contest the suit in the interest of justice. At the same time, the inconvenience caused to the 1st respondent is to be compensated on reasonable terms. Hence, considering that the suit is yet to reach an irreversible stage, this court is of the view that one more opportunity may be given to the petitioners to participate in the proceedings, subject to appropriate terms. The point is answered accordingly.

RESULT :

In the result, this petition is allowed. The exparte order dated 08.06.2022 against the petitioners 1 and 4; the exparte order against the

2nd petitioner dated 29.07.2022; and the exparte order against the 3rd petitioner dated 19.01.2024, are hereby set aside, subject to the petitioners paying a cost of Rs.6000/- to the 1st respondent/plaintiff directly on or before 27.11.2025 and file the cost memo on 28.11.2025, failing which this petition shall stand dismissed automatically. Call on 28.11.2025.

Order dictated by me to the Stenographer, transcribed by him in the Computer, corrected and pronounced by me, in the open court, this 19th day of November 2025.

Principal District Judge,
Villupuram.

List of witness examined and document

marked on the side of the Petitioners :- - Nil -

List of witness examined and document

marked on the side of the Respondents :- - Nil -

Sd/- A.M
P.D.J,
VPM.

Draft / Fair Order :
I.A. No.7/2025 in
O.S. No.24/2022
Dated: 19.11.2025