

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE
VIRUDHUNAGAR**

Present : Thiru. **T.V.Hemanandakumar, B.A.,L.L.M.,**

Additional District Judge, Virudhunagar

Tuesday, the 11th day of March, 2025

IA No.06/2023 and

IA No.12/2023 in

OS.No.22/2022

IA No.06/2023

S.R.Jawahar - Petitioner/21st Defendant.
/Vs/

Beula @ K.Dhanushmathi - Respondent/Plaintiff.

IA No.12/2023 in IA.47/2022

S.R.Jawahar - Petitioner/21st respondent/
21st Defendant.
/Vs/

Beula @ K.Dhanushmathi - Respondent/Petitioner/Plaintiff.

These two petitions came up on 03.03.2025 for final hearing before me, Thiru.M.Vivekananth, Learned advocate appeared for the petitioner and Thiru.M.Marimuthu, Learned advocate appeared for respondent in both the petitions and upon considering all material records and hearing the arguments on both sides and having stood over till this day for consideration and this court doth deliver the following

COMMON ORDER

1) **IA.06/2023**

This petition is filed by the petitioner/21st defendant under Order 9 Rule 7 CPC to set aside the exparte order dated 25.04.2023.

2) **IA.12/2023**

This petition is filed by the petitioner/21st respondent under Order 9 Rule 7 CPC to set aside the exparte order in IA.No.47/2022.

3) It is the averments of petitioner in both the petitions that the respondent filed the suit for partition and for declaration. While the case was pending, on 25.04.2023 the case was posted for filing written statement on the side of this petitioner in the main suit and counter in IA.47/2022. On that day, this petitioner was ill and so remained in his house. Hence he could not appear before the court and could not file written statement and counter. Hence this petitioner was set exparte. The non appearance of the petitioner was not deliberate . Hence the exparte order has to be set aside.

4) The respondent/plaintiff filed counter contending that the allegation that the petitioner was ill and so remained in his house is false. The petitioner has not produced any records to prove his inability to appear before the court. Only to delay the proceedings, the petitioner remained exparte and now filed this petition and hence these petitions have to be dismissed.

5) There is no oral or documentary evidence on both sides.

6) The point for consideration is whether the petitions deserve to be allowed?

7) Heard and documents perused.

8) **Point:**

The petitioner herein is the 21st defendant in the suit and 21st respondent in IA.47/2022. On 25.04.2023, the case was posted for filing written statement in the main suit and counter in IA.47/2022. On that day, the petitioner did not appear before this court and was set exparte. The petitioner has stated the reason for his non appearance that he was ill and remained in his house. But he failed to state that the nature of illness and failed to produce any medical certificates in this regard. So the reason stated by the petitioner cannot be accepted as sufficient cause to set aside the exparte order.

9) Moreover, in these petitions, the other defendants and other respondents were not impleaded. So this court returned the petition to implead the other defendants and respondents. But even after that, the petitioner without impleading

the other defendants and respondents filed the above petitions. In this regard, Rule 31 of Civil Rules of Practice is as follows.

31. Notice.—(1) Unless the court otherwise orders notice of an interlocutory Application shall be given to the other parties to the suit, matter or proceeding or their pleader not less than three days before the day appointed for the hearing of the application.

So as per the above provision, notice to all the parties to the suit is mandatory. Even after returned, the petitioner did not implead the other defendants and other respondents and did not give notice to other defendants and respondents. Hence also these petitions are liable to be dismissed.

10) In the result, IA.06/2023 and IA.12/2023 are dismissed. No order as to cost.

Dictated to the steno-typist, typed by her, corrected and pronounced by me in open court, on this the 11th day of March, 2025.

(Sd.) T.V.Hemanandakumar,
Additional District Judge,
Virudhunagar.

Witness and Exhibits on the side of the Petitioner:

Nil.

Witness and Exhibits on the side of the Respondent:

Nil.

(Sd.) T.V.Hemanandakumar,
Additional District Judge,
Virudhunagar.