

**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.07/2023 and

IA No.13/2023 in

OS.No.22/2022

IA No.07/2023

1. N.Thangapandi

2. N.Gurudevi.

-

Petitioners/Defendants 23 & 24.

/Vs/

Beula @ K.Dhanushmathi

-

Respondent/Plaintiff.

IA No.13/2023 in IA.47/2022

1. N.Thangapandi

2. N.Gurudevi.

-

Petitioners/respondents 23 & 24/
Defendants 23 & 24.

/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 petitioners 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.07/2023**

This petition is filed by the petitioners/defendants 23 and 24 under Order 9 Rule 7 CPC to set aside the exparte order dated 25.04.2023.

2) **IA.13/2023**

This petition is filed by the petitioners/respondents 23 and 24 under Order 9 Rule 7 CPC to set aside the exparte order in IA.No.47/2022.

3) It is the averments of petitioners 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 petitioners in the main suit and counter in IA.47/2022. On that day, the petitioners' relative died and so the petitioners have to go out of station. Hence they could not appear before the court and could not file written statement and counter. Hence the petitioners were set exparte. The non appearance of the petitioners was not deliberate. Hence the exparte order has to be set aside.

4) The respondent/plaintiff filed counter contending that the allegation that the petitioners' relative died and so the petitioners have to go out of station is false. The petitioners have not produced any records to prove their inability to appear before the court. Only to delay the proceedings, the petitioners 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 petitioners herein are the 23rd and 24th defendants in the suit and 23rd and 24th respondents 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 petitioners did not appear before this court and were set exparte. In the affidavit, the petitioners have stated that one of their relative died and so they went out of station. But the petitioners did not state the name of the relative, who died and the place where they went on that day. So this court is of the view that the petitioners failed to show sufficient cause for their nonappearance.

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.07/2023 and IA.13/2023 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 Petitioners:

Nil.

Witness and Exhibits on the side of the Respondent:

Nil.

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