

**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.02/2023 and
IA No.08/2023 in
OS.No.22/2022

IA No.02/2023

N.Jeyabalan - Petitioner/2nd Defendant.
/Vs/

Beula @ K.Dhanushmathi - Respondent/Plaintiff.

IA No.08/2023 in IA.47/2022

N.Jeyabalan - Petitioner/2nd respondent/
2nd Defendant.
/Vs/

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

These two petitions came up on 03.03.2025 for final hearing before me, Thiru.M.Vevekananth, 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.02/2023**

This petition is filed by the petitioner/2nd defendant under Order 9 Rule 7 CPC to set aside the exparte order dated 25.04.2023.

2) **IA.08/2023**

This petition is filed by the petitioner/2nd 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 suffering from severe fever and so 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 suffering from fever 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 deserves to be allowed?

7) Heard and documents perused.

8) **Point:**

The petitioner herein is the 2nd defendant in the suit and 2nd 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 set exparte. The reason stated for his nonappearance is that this petitioner was suffering from fever. As submitted by the respondent's counsel, the petitioner has not produced any medical records that he was ill and so only he could not appear before the court. So this court is of the view that the petitioner failed to show sufficient cause for his 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, in 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.02/2023 and IA08/2023 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.