

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

Present : **Tmt.S.K.ANGALAESWARI, B.A., B.L.,**  
**ADDITIONAL DISTRICT JUDGE,**  
**VIRUDHUNAGAR.**

Thursday, the 31<sup>th</sup> day of July, 2025

**I.A.No.02/2025**  
**in**  
**OS.No.256/2023**

1. S.Kumarasamy  
2. S.Nagajothi ... Petitioners/Defendants

Vs

1. V.Jeyalakshmi  
2. V.Venkatesh  
3. V.Ubenthran ... Respondents/Plaintiffs

This petition came up before me on 24.07.2025 for final hearing in the presence of Thiru.S.Rajesh, learned advocate for the Petitioners and Thiru.M.Chandrasekar, learned advocate for the Respondents 1 to 3 and having stood over till this day for my consideration, this court deliver the following . . .

**ORDER**

This Petition is filed under Order 9 Rule 7 of CPC by the Petitioners/Defendants to set aside the exparte order dated 21.03.2024 passed against him.

**2) The averments of the Petition affidavit in brief are as follows:**

The Petitioner states he is the petitioner in this petition and he is the 2nd defendant in the original suit. The 1st petitioner/1st respondent is his brother. He filing this affidavit on behalf of himself and the 2nd petitioner/2nd respondent. The plaintiffs have filed a original suit for partition against the defendants. In the original suit, on 21.03.2024, there was an opportunity to file a written statement on

their side. On 19.03.2024, she slipped and fell at her house and suffered from muscle spasms in her leg and was unable to walk. Her brother, the 1st petitioner, was suffering from ill health due to old age. Due to this, they were unable to meet their advocate in person and inform him about the details of the case. Therefore, they were unable to appear before this court on the above date and also unable to file a written statement on their side. The above mistake did not occur intentionally. Hence the court has pass a ex-parte decree against them on 21.03.2024. The above details have only just been revealed. Their non-appearance is neither wilful nor wanton. They having valid case in the main suit, the exparte order had to be set-aside. Otherwise they will be put to irreparable loss and much hardship. Therefore, the petition has been filed by the petitioner/defendant to set aside the exparte order dated 21.03.2024.

3) **The averments of the Counter affidavit filed by 2<sup>nd</sup> Respondent and also adopted 1<sup>st</sup> and 3<sup>rd</sup> Respondents in brief are as follows:**

The Respondents stated that a few of the facts stated by the petitioners in their petition are denied as falsehoods and fabrications. The petition is not maintainable in law. The remedies sought by the petitioners are not available to them. Since the petitioners/defendants did not file a written statement in the above case, the Court passed an exparte order dated 21.3.2024 against the petitioners. Notice has been sent to the petitioners in the petition IA No.01/2024 under Order 7 Rule 14 CPC for an exparte hearing on the part of the respondents/plaintiffs and the court allowed the petition on 10.01.2025 due to non-appearance of defendants. The reasons stated by the petitioners in their affidavit are not valid and no documents have been filed with the petition. Therefore this petition should be dismissed with costs of respondents.

4. **Point for consideration:**

Whether this petition is to be allowed or not?

5. **Points** :

- i. Heard both side arguments. Petition affidavit and counter affidavit filed by the petitioner and available records were perused.
- ii. For the sake of convenience the parties are arrayed as per their rank in the suit.

It is a contention of the defendant that the plaintiff filed this suit for partition against defendants. While the above suit in O.S.No.256/2023 posted for filing of written statement on behalf of her 21.03.2024, she was unable to intimate the date of hearing to her lawyer due to muscle spasms in her leg and the 1st petitioner was suffering from ill health due to old age. Hence they prayed before this court non appearance of them is neither wilful nor wanton.

This petition was resisted by the plaintiffs and their main contention that, the reasons stated by the petitioners in their affidavit are not valid and no documents have been filed with the petition. Hence the above application not maintainable.

The learned counsel for the plaintiff contended that the petition filed by the petitioner to set aside the ex parte order is not maintainable since it is not carry any merits.

By considering the overall facts and the circumstances of this case and by perusing the records this court finds that before going to the merit of the application it is just and necessary to extract a law namely Order 9 Rule 7 of Code of Civil Procedure hereunder,

***7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.- Where the Court has adjourned the hearing of the suit ex parte, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.***

In the light of the above said provision it is crystal clear that under Order 9 Rule 7 CPC the court can permit the defendants to participate in the proceedings from the date they appear. Therefore there is No hard and fast rule can be laid down. Hence the reason assigned by the defendant in his petition sustainable. In such cases an order awarding costs to the plaintiff would meet the ends of justice. Hence this court is inclined to allow the above petition with cost.

In the result, This petition will be allowed on payment of costs of Rs.3,000/- to the respondents on or before 19.08.2025. Failing which this petition stands dismissed. Reporting compliance on 20.08.2025.

Dictated to the steno-typist, directly typed by her in the computer, corrected and pronounced by me in open court, on this the 31<sup>st</sup> day of July, 2025.

Additional District Judge,  
Virudhunagar.

Witness and Exhibits on the side of the Petitioners: Nil

Witness and Exhibits on the side of the Respondents: Nil

Additional District Judge,  
Virudhunagar.