



WEB COPY



A.No.3574 of 2022 in
TOS.No.36 of 2016

Application No.3574 of 2022
in
TOS.No.36 of 2016

G. CHANDRASEKHARAN, J.

This application is filed to set aside the exparte order dated 10.06.2019 passed in TOS.No.36 of 2016.

2. Learned counsel for the petitioner submitted that the petitioner is the one who was taking care of this case on behalf of the other petitioners and he did not have proper employment and was not resourceful enough to maintain the family. Therefore, the first applicant could not contact his counsel to file the written statement in the suit. It was also stated that the mother of the second petitioner was aged 66 years at the relevant time and during the year 2017, she fell down and sustained fracture in hip region. It is further stated that the younger brothers of the second petitioner also did not secure a good job and therefore, it was the second petitioner who was taking care of the entire family. Further, due to Covid-19 pandemic, the second petitioner faced acute financial loss. Above all, during April 2022, the first applicant underwent a surgery and incurred huge expenses. It is stated that the petitioners have substantial interest in the suit filed by the first respondent/plaintiff for partition and they are



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entitled to $\frac{1}{4}$ share in the suit property. Therefore, it is submitted by the learned counsel for the applicants that if the exparte order dated 10.06.2019 is not set aside, much prejudice will be caused to the petitioners.

3. Learned counsel for the first respondent/plaintiff has no serious objection for allowing this application.

4. Learned counsel for the respondents 5 to 9 have no objection in allowing this petition.

5. Taking note of the above submission of the counsel for the parties and the fact that the suit is pending at the stage of completion of examination of P.W.1, this court is of the view that the petitioners have to be given an opportunity to defend the suit.

6. In view of the above, this application is allowed subject to payment of costs of Rs.5,000/- payable by the petitioners to the plaintiff-first respondent.



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7. Post the matter after two weeks for reporting compliance.

12.09.2022

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