

**IN THE COURT OF THE DISTRICT JUDGE, ALAPPUZHA**

**Present : Sri. K.K.Balakrishnan, District Judge**

Friday the 31<sup>st</sup> day of January, 2025/ 11<sup>th</sup> Magham 1946

**I.A. No.1/2024 in AS No.87/2008**

(Filed on 23.08.2024)

- Petitioners:
1. Somasekharan Nair, Aged 73, H/o Sasikumari, Muttathethu House, Vettuveni P.O, Haripad, Alappuzha
  2. Salini, Aged 43, D/o Sasikumari, Muttathethu House, Vettuveni P.O, Haripad, Alappuzha
  3. Jayakrishnan, Aged 37, S/o Sasikumari, Muttathethu House, Vettuveni P.O, Haripad, Alappuzha

By Adv.G.Harikumar

- Respondents:
1. T.K.Ambujakshi, Aged 72, W/o Late Madhavan Vasudevan, Thekkekandathil House, Thumpoly Muri, Alappuzha
  2. V.Mohanan, Aged 47, S/o Late Madhavan Vasudevan, Thekkekandathil House, Thumpoly Muri, Alappuzha
  3. Jeeja, Aged 49, D/o Late Madhavan Vasudevan, Thekkekandathil House, Thumpoly Muri, Alappuzha
  4. Jameela, Aged 43, D/o Late Madhavan Vasudevan, Thekkekandathil House, Thumpoly Muri, Alappuzha
  5. Jayasree, Aged 46, D/o Late Madhavan Vasudevan, Thekkekandathil House, Thumpoly Muri, Alappuzha
  6. Santhoshkumar, Aged 42, D/o Late Madhavan Vasudevan, Thekkekandathil House, Thumpoly Muri, Alappuzha
  7. Sindhu, Aged 37, D/o Late Madhavan Vasudevan, Thekkekandathil House, Thumpoly Muri, Alappuzha

By Adv.K.S.Hariharaputhran

This is an application filed by one Somasekharan Nair, as he is the husband of 2<sup>nd</sup> appellant, who died on 23.08.2023, to implead the legal representatives of deceased in A.S.No.87/2008. This petition having been heard on 27.01.2025 and the court on 31.01.2025 passed the following.

**ORDER**

This petition is filed by one Somasekharan Nair, as he is the husband of 2<sup>nd</sup> appellant, who died on 23.08.2023, to implead the legal representatives of deceased in AS No.87/2008.

2. The petitioners in the affidavit stated that the 2<sup>nd</sup> appellant in AS No.87/2008 viz., P.E. Sasikumari died intestate on 23.08.2023. 1<sup>st</sup> petitioner in this petition is the husband of above said P.E. Sasikumari and petitioners 2 and 3 are their children. Hence they are the only legal heirs of deceased P.E. Sasikumari and they are legally entitled to inherit her properties. AS No.87/2008 is filed against the judgment and decree dated 11.04.2008 in O.S.622/2004 of Additional Munsiff's Court, Alappuzha. Therefore, it is highly necessary to implead the petitioners as additional appellants 8 to 10 in the above appeal as the legal representatives of deceased 2<sup>nd</sup> appellant and allow them to contest the matter.

3. Against the petition, R5 and R6 filed objections with following contentions; The petition is not maintainable either in law or on facts. The appellants including deceased Sasikumari are following Marumakkathayam system of inheritance, as they are Travancore Nairs. So, first petitioner is not a legal representative of deceased second

appellant. Therefore, he is not a competent person to file the present petition. Hence, the petition is to be dismissed. The second appellant died when the matter was pending before Hon'ble Supreme Court and the judgment was passed by the Hon'ble Supreme Court without impleading her representatives. So, the judgment of the Supreme Court is a nullity as it was passed against a dead person. In that circumstance, the legal representative of deceased second appellant have to move Hon'ble Supreme Court to implead them as legal representatives in the matter. So, this court has no jurisdiction or authority to implead legal representatives of deceased second appellant. The petitioners are well aware about the pendency of the case. The so called ailment of the first petitioner is not at all a ground to condone the delay and set aside abatement. The first petitioner has no ailments as alleged. Therefore, prayed to dismiss the petition.

4. Heard the petitioners and contesting respondents 5 and 6.

5. Following are the points for consideration;

i) Whether the petition is maintainable ?

ii) What order as to costs;

6. **Answer to the points**: The learned counsel appearing for both sides, repeated same arguments in I.A.2/2024 with respect to the maintainability of the petition. The dictum laid down by the Division

Bench of Hon'ble High Court in **Eswara Iyer v. Vella Muthan (1998 KHC 432)** is the main argument advanced by both sides.

7. The question of law decided by the Hon'ble High Court in that judgment is fully applicable to the facts and disputes involved in this petition. Hon'ble High Court propounded that if the appellant was dies while pending the matter before the Hon'ble Supreme Court and the fact of death is not brought to the attention of Hon'ble Supreme Court and if judgment is passed it will be a nullity as it is a judgment affecting rights of dead person. If the matter is without noticing this fact is remanded to the court below, the affected party has to approach Hon'ble Supreme Court to set aside the abatement as well as to condone delay in filing the petition to get the relief. In this case also, second appellant died during the pendency of SLP before the Hon'ble Supreme Court and the fact of death was not brought to the attention of Hon'ble Supreme Court. Now, the petition is filed by legal representatives of deceased to set aside the abatement and to implead them as legal representatives of the deceased second appellant. Applying the dictum laid down by the Hon'ble High Court, this court has no jurisdiction to entertain the present petition to set aside abatement as well as to allow the petitioners to contest the appeal as the legal representatives of deceased second appellant. They have filed separate

petition IA 2/2024 for condoning the delay in filing the petition to implead them as the legal representatives of deceased second appellant. By detailed order, I.A.2/2024 dismissed by this court. Consequent to the dismissal of I.A.2/2024, this petition also will not stand and the same is only liable to be dismissed. Considering the facts and circumstance of the case, parties are directed to bear their cost.

In the result, this petition is dismissed without cost.

*Dictated to the Confidential Assistant, transcribed and typed by her, revised and corrected by me and pronounced on this the 31<sup>st</sup> day of January, 2025.*

*Sd/-*  
**K.K.BALAKRISHNAN**  
**DISTRICT JUDGE**

**APPENDIX:** Nil

*Id/-*  
**DISTRICT JUDGE**