

IN THE COURT OF MUNSIFF, THIRUVALLA

Present:-Sri. Aravind.S.J, Munsiff.

Wednesday the 11th day of March 2026/ 20th day of Phalguna 1947 SE.

Rest. Petition 48/2024, IA 02/24, IA 03/24, IA 04/2024 in OS 171/2019

Between

Hrishikesh Gopal, aged 35, S/o Gopalakrishnan
Nair, Venattu Veedu, Mathil Bhagom Muri,
Thiruvalla Village & Taluk.

}
Petitioner

(Adv. K.P.Balakrishna Kurup)

And

1. G.Krishnan Namboothiri, aged 51, S/o Govindan
Namboothiri, Idakkattillathu, Vazhappally P.O,
Manjadikkara Muri, Vazhappally Kizhakkum
bhagom, Changanasseri Taluk.
2. Nisha.V, aged 37, Vattakkattu Melethil, Kottathala
P.O, Neduvathoor Village, Kollam Dist.
3. Hrithunath (Minor), aged 13, S/o Nisha.V,
Vattakkattu Melethil, Kottathala P.O, Neduvathoor
Village, Kollam Dist.

}
Respondents

(This minor petitioner is rep by his mother
Nisha.V)

(By Adv. S.N.Harikrishnan)

These petitions are filed under order 9 Rule 9 Section 151 of the Code of Civil Procedure and Order 22 Rule 3 of the Code of Civil Procedure and section 5 of Limitation Act.

These petitions having been finally heard on 30.01.2026 and stood over for consideration on 11.03.2026 and on the same day the court passed the following:-

COMMON ORDER

Common order in IA 2/24, 3/24 and 4/24. These petitions are filed to implead the legal heirs of deceased Plaintiff, to condone the delay and to set aside the order of abatement.

2. The plaintiff in the suit died on 21.01.2022. The present petitions are filed only on 30.07.2024 and thus there is a delay of 771 days. It is contended that the petitioner was outside Kerala and was unaware about the case and came to know about the case only recently. The respondent filed objection challenging the locus standi of the petitioner. It is always in the interest of justice that a petition is decided on merits. However, it is pertinent to notice that petitioner had filed IA 1/23, 2/23 to set aside the order of abatement and to implead him as additional plaintiff on 01.11.2023 which is after the dismissal of the suit on 30.10.2023. Therefore, the petitioner was aware of the proceedings in the case and the fact that the suit was abated. It is however to be considered that this court had closed. IA 1/23 and 2/23 erroneously without proceeding further in the matter. It is well settled that an order of court should not cause prejudice to any party. The petitioner had contended that he went outside Kerala for his job and was unaware of the dismissal of the petition. The same is a good cause. I am thus of the opinion that the delay can be condoned and order of abatement is also set aside.

3. The suit was filed for the setting aside the document executed by the deceased son of the plaintiff. The plaintiff instituted the suit as the legal heir of the son and also due to the fact that she had life interest over the property. The suit was filed in the year 2015 as an indigent OP and was numbered as OS only in 2019. However the date of filing of the petition as indigent. OP is to be reckoned as the date of filing of the suit as provided under order 33 rule 8 CPC. Therefore section 15 (2) proviso (c) has no application as the same was incorporated only in 2016. The same being substantive right and has only prospective effect. This would indicate that the petitioner would be a legal heir of the mother and the right to sue survives. The

inconvenience caused to the other side must be considered and the same can be compensated in terms of money. Hence IAs allowed on payment of costs of Rs. 2,500/- to the 1st respondent. For payment of costs on or before 18.03.2026.

Pronounced by me in open Court, this the 11th day of March 2026.

Sd/-
ARAVIND.S.J
MUNSIFF

APPENDIX

NIL

Id/-
MUNSIFF