

IN THE COURT OF THE ADDITIONAL DISTRICT MUNSIF OF POLLACHI

PRESENT: THIRU.N.BHARATHIRAJAN, B.A., B..L.,

ADDITIONAL DISTRICT MUNSIF, POLLACHI.

TUESDAY THE 13th DAY OF FEBRUARY 2024

I.A.No.12/2024 in O.S.No.82/2017

- 1) M.R.Suresh (Died)
2) S.Selvi ... Petitioners/Plaintiffs
- 3) R.S.Ansilin
4) R.S.Ansila
5) R.Radhamma ... Petitioners/ Proposed Parties

/VS/

- 1) A.Moulana Azad
2) Makkinampatti Panchayat Rep by
Block Development Officer,
Panchayat Union, Pollachi (South)
or by its President
3) Block Development Officer,
Panchayat Union, Pollachi (South)
4) The Tahsildar, Pollachi
5) The State rep by its District Collector,
Coimbatore ... Respondents/Defendants

This petition coming on 03.02.2024 for final hearing before me in the presence of Thiru.N.Sundararajan, Advocate for the Petitioner/Plaintiff, and of Thiru.K.Jambulingam, Advocate for the 1st Respondent/Defendant, and of Government Pleader for Respondents 2 to 5/Defendants and on perusal of all material on record and hearing submission, this court delivered the following:

ORDER

Petition filed under Section 5 of Limitation Act to condone the delay of 17 days in filing petition to set aside the abatement against the petitioner in the above Suit.

2.1) The petitioners herein are the plaintiffs in the above suit. The petitioners have filed the above suit for declaration and for consequential Injunction. While pending suit, the 1st plaintiff died on 12.02.2022 leaving behind his wife who is the 2nd petitioner/plaintiff herein son, daughter and mother who are the proposed parties/petitioners 3 to 5 as legal heirs to succeed his estate. That after the demise of 1st Plaintiff, the petitioners have temporarily shifted their residence to Thiruvanantha Puram, Kerala. Therefore, they are not able to meet their advocate to give instruction to implead the petitioners 3 to 5 as parties to the suit. Hence, necessary application to implead the proposed parties could not been filed in time and that the suit has been abated against the 1st plaintiff on 12.05.2022.

2.2) Therefore the petitioners have come up with this application to condone the delay of 17 days in filing petition to set a side the abatement.

3) **On the other hand**, the 1st respondent contended in his counter that the address of petitioners 2 to 4 is clearly proved that they are continuously residing at Thiruvalluvar colony, Makkinampatti Village, Pollachi. Hence it is false to state that the petitioners have shifted their residence to thiruvananthapuram and that they are not able to meet their advocate. The petitioners have filed this petition belatedly knowing the fact that the 1st petitioner died on 12.02.2022. Therefore the petition is liable to be dismissed with cost.

4) Respondents 2 to 5 did not file counter for this petition.

5) **POINTS FOR CONSIDERATION:**

Whether the petition is to be allowed?

6) **DISCUSSION AND DECISION :**

Heard both sides and Records have been perused. The petitioners have filed the above suit for declaration and consequential injunction. The petitioners states that while pending suit, the 1st plaintiff died on 12.02.2022 leaving behind the 2nd petitioner who is the wife of deceased 1st plaintiff, son, daughter and mother who

are the Proposed petitioners/Proposed plaintiffs 3 to 5 as legal heirs to succeed his estate. The respondents did not deny the above facts.

7) The reason stated by the petitioners/plaintiffs that after demise of the 1st petitioner, they have temporarily shifted their residence to Kerala and as such they could not meet their counsel and therefore, the petitioners are unable to file necessary application to implead the legal heirs of deceased 1st plaintiff in time is acceptable and justifiable one. Further, in order to decide the case on merits and to give one more opportunity to the petitioners, this court is inclined to allow this petition with costs.

In the result, this petition is allowed subject to payment of costs Rs.1000/- to the 1st respondent/Defendant on or before 23.02.2024. Call on 23.02.2024.

Dictated to the steno-typist, typed by her in the Computer directly, printed, corrected and pronounced by me in open court this the 13th day of February 2024.

Additional District Munsif ,
Pollachi.

List of witness and documents for Both side: - Nil -

Additional District Munsif,
Pollachi

Fair Order in
I.A.No.12/2024 in
O.S.No.82/2017
Dated : 13.02.2024
ADMC, POLLACHI.