

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

Present : Tmt.M.Santhosham., B.Sc., B.L.,

District Munsif, Sulur

Thiruvalluvar year 2056 Visvavasu year, 6th day of Month of Aadi

Tuesday the 22nd day of July 2025

I.A.No.9/2025

in

OS.No.95/2018

1. Lakshmi @ Lakshmiammal (Died)

2. R.Saraswathy (Died)

3. Smt.Jothimani

...Petitioners/ Plaintiffs

4. N.Rajamani

5. R.Vinothkumar

6. R.Vidhya

**...Petitioners 4 to 6/ proposed plaintiffs
4 to 6 legal representative of deceased
2nd plaintiff**

/ Vs /

1. R.Subramanian

2. Selvamani

3. S.Suresh

...Respondents / Defendants

This petition is coming on this day for final hearing before me in the presence of Mr.N.Ramar, Advocate for the Petitioners and of Mr.M.Ganeshkumar, Advocate for the Respondents and upon hearing of both parties and upon perusing the records this Court delivered the following :

ORDER

Petition filed by the petitioners under order 22 rule 9 and section 151 of CPC to setting aside the abatement of the said suit.

1. The brief averments of the affidavit filed by the Petitioner as follows:-

1.1. The main suit for Permanent Injunction. The suit pending before this court. In the mean time the 2nd plaintiff had died on 24.01.2023. The 2nd plaintiff in the above case leaving behind her husband, son and daughter. The proposed plaintiff entitled to proceed with the case along with the plaintiffs 5th to 6th and also filing an application to set a side abatement themselves and the 5th, 6th plaintiffs is expressing their No objection by supporting separate affidavit. The proposed plaintiffs are in the above matter that are arrayed herein and are the proposed parties to be set a side the abatement as Co-plaintiffs 5th and 6th being the legal representatives of the said deceased 2nd plaintiff as to enable proposed plaintiffs to continue the proceedings.

1.2. The 5th proposed plaintiff laid up in bed due to Jaundice, the 4th proposed plaintiff came to help his son, the proposed plaintiffs could not contact his counsel and to instruct him to file necessary application to set a side abatement the said legal heirs of the deceased plaintiff in the suit. Hence, the suit as against the plaintiff abates. The 4th proposed plaintiff was not wontedly negligent and careless in taking steps to set a side abatement. Hence, the petition is to be allowed.

2. The brief averments of counter statement filed by the Respondents as follows :

2.1. The petition is false, frivolous and unsustainable both in law and on facts of the case. The petitioners have failed to assign any bonafide reason for delay in filing the petition to implead the legal heirs of the deceased 2nd plaintiff. The petitioners were well known about the demise of the deceased 2nd plaintiff because of their carelessness and the negligence failed to take necessary steps to implead them to the above suit on time. This Court has already dismissed the above suit three times and it has been restored and the petitioners has come up with this abatement petition only to drag on the proceedings. Hence, the petition ought to be

dismissed.

3. No Witnesses were examined on either side, and no documents were marked as exhibits.

4. Points for Consideration :-

Whether the petition under order 22 rule 9 and section 151 of CPC to setting aside the abatement of the said suit is to be allowed?

5. Points:-

5.1. The petition affidavit, counter and the enquiry of both parties were carefully considered. Heard the counsels for both the parties. The suit documents were carefully examined. The main suit is filed for Mandatory injunction. The 2nd plaintiff died on 24.01.2023 leaving behind the 4th to 6th petitioners who is her husband, son and daughter to succeed her estate. Now, the 4th to 6th petitioners are proposed party to impleaded as 4th to 6th plaintiffs being the Legal Representative of the said deceased 2nd petitioner/ 2nd plaintiff as to continue the proceedings.

5.2. On the side of the respondents objected that the petitioners were well known about the demise of the deceased 2nd plaintiff because of their carelessness and the negligence failed to take necessary steps to implead them to the suit on time. The petitioners has come up with this set aside abatement petition only to drag on the proceedings.

5.3. The main suit filed for Mandatory injunction. It is not disputed by the respondents that during the pendency of the suit the 2nd plaintiff died on 24.01.2023 and the legal heirs of deceased 2nd plaintiff is proposed 4th to 6th plaintiffs. In a suit for Mandatory injunction all the parties to be added as necessary parties to get binding judgment. Hence, this court thinks it is necessary to implead

the parties as 4th to 6th plaintiffs. Hence, in the interest of justice this petition is allowed.

In the result this petition is allowed. No cost.

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 22nd day of July 2025.

Sd/M.Santhosham
District Munsif,
Sulur.

List of witnesses and documents on petitioners side:-

Nil

List of witnesses and documents on Respondents side:-

Nil

Sd/M.Santhosham
District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.9/2025 in
O.S.No.95/2018
Dated : 22.07.2025
DMC, Sulur.