

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, CHIDAMBARAM

PRESENT: Tmt. S.SUGANIYA SRI B.A.B.L (Hons), M.L., PGDAML

ADDITIONAL DISTRICT MUNSIF, CHIDAMBARAM

TUESDAY, THE 7th DAY OF MARCH 2023

IA.NO. 194/2022 AND

IA.NO. 195/2022 AND

IA.NO. 196/2022

IN

OS.NO.274/2012

Muthumanicka Nadar Trust
its trustee T.C.Muthuraj

..... Petitioner/ Plaintiff

/Vs/

1. Sethu ammal (died)
2. Velayutham
3. Gandhimathi
4. Ramasamy
5. Vembu
6. Nedunchezhiyan
7. Durai @ Kaliyamoorthy
8. Meganathan
9. Lakshmi
10. Kaviyarasan
11. Santhya
12. Sangeetha
13. Kumar
14. Ravi
15. Komathi
16. Malathi

....Respondents/ 2 to 8 defendants

....Lrs of 1st defendant/ Proposed
Defendants

For Petitioner	Tmt.G.Vijayalakshmi, Advocate
Respondent No.1	Died
For Respondents 2 to 8	Thiru.A.Sambandam, Advocate
For Respondents 9 to 16	Exparte in the petition
Relief Claimed in 194/2022	Petition filed under Section 5 of Limitation Act to condone the delay in filing the petition for setting aside the abatement due to the death of 1 st defendant

Relief Claimed in 195/2022	Petition filed under Order 22 Rule 9 of CPC to condone the delay and to set aside the order of abatement.
Relief Claimed in 196/2022	Petition filed under Order 22 Rule 4 of CPC to implead the legal heirs of 1 st defendant.
Final Hearing	22.2.2023.

Upon hearing the arguments of both side counsels and on perusal of the entire records and having stood over for consideration till this day, this court delivers the following

COMMON ORDER

The case of petitioner in IA. NO. 194/2022:

1. The petitioner is plaintiff and the suit is filed for the relief of declaration of plaintiff's title for B schedule property and for recovery of possession. During the pendency of the suit, the 1st defendant has died on 16.3.2022 and has left 9 to 16 respondents as his legal heirs. The petition to set aside the order of abatement ought to have been filed within 150 day but it is filed after the delay of 175 days. The delay in filing this petition is neither willful nor wanton as such the petitioner is not aware about the death of the 1st defendant. On due enquiry, it is found that the 1st defendant has 3 sons and 2 daughters and of which the elder son being Sekar has already predeceased and he has left his wife Lakshmi, his son Kaviyaran, his daughters Santhya and Sangeetha as his legal heirs. Therefore, the petitioner prays to condone the delay in filing the petition for setting aside the abatement caused due to the death of 1st defendant. Otherwise, the petitioner will be put to irreparable loss and injury. Hence, this petition.

The case of 2 to 8 respondents in IA. No.194/2022:

2. The respondents vehemently oppose the petition filed by the petitioner. The petitioner has not filed legal heir certificate and the death certificate of deceased 1st defendant and that of Sekar. The petition does not disclose the date of death of Sekar. At the time of death of 1st defendant on 16.12.2021, the court was functioning and the petitioner has many landed properties in suit village and the fact of death of 1st defendant was well known to the petitioner. Despite of which,

this petition was filed with delay and cause title was also not clearly shown. Therefore, the respondents prays to dismiss the petition with costs.

The case of petitioner in IA. NO.195/2022:

3. The petitioner is plaintiff and the suit is filed for the relief of declaration of plaintiff's title for B schedule property and for recovery of possession. During the pendency of the suit, the 1st defendant has died on 16.3.2022. The petitioner came to know about the death of 1st defendant when his counsel filed memo in that regard. The 1st defendant was examined as DW1 and after which till DW6 was examined on defendant side. When the commissioner inspected the suit property on 13.11.2021, the 1st defendant was alive. The fact of death of 1st defendant was stated to the court only after many adjournments. Due to which, the petitioner could not be able to file the petition for impleading the legal heirs within 90 days from the death of 1st defendant. Therefore, the petitioner prays to condone the delay and to set aside the order of abatement caused due to the death of 1st defendant.

The case of 2 to 8 respondents in IA.No.195/2022:

4. The respondents vehemently oppose the petition filed by the petitioner. The petitioner has not filed legal heir certificate and the death certificate of deceased 1st defendant and that of Sekar. The petition does not disclose the date of death of Sekar. At the time of death of 1st defendant on 16.12.2021, the court was functioning and the petitioner has many landed properties in suit village and the fact of death of 1st defendant was well known to the petitioner. Despite of which, this petition was filed with delay and cause title was also not clearly shown. Therefore, the respondents prays to dismiss the petition with costs.

The case of petitioner in IA. NO.196/2022

5. The petitioner is plaintiff and the suit is filed for the relief of declaration of plaintiff's title for B schedule property and for recovery of possession. During the pendency of the suit, the 1st defendant has died on 16.3.2022. On due enquiry, it is found that the 1st defendant has 3 sons and 2 daughters and of which the elder son being Sekar has already predeceased and he has left his wife Lakshmi, his son

Kaviyarasan, his daughters Santhya and Sangeetha as his legal heirs. The suit was filed against 1 to 8 defendants so as to remove the illegal construction in the B schedule property. The proposed parties are in possession of the property which was encroached by the 1st defendant. Therefore, the petitioner prays to implead the legal heirs of 1st defendant.

The case of 2 to 8 respondents in IA.No.196/2022:

6. The respondents vehemently oppose the petition filed by the petitioner. The petitioner has not filed legal heir certificate and the death certificate of deceased 1st defendant and that of Sekar. The petition does not disclose the date of death of Sekar. At the time of death of 1st defendant on 16.12.2021, the court was functioning and the petitioner has many landed properties in suit village and the fact of death of 1st defendant was well known to the petitioner. Despite of which, this petition was filed with delay and cause title was also not clearly shown. Therefore, the respondents prays to dismiss the petition with costs.

7. Now the point for consideration is whether the petitioner is entitled to get the relief as prayed for?

8. On the side of both parties, no oral and documentary evidence was let in.

Points for consideration:

9. Heard both sides learned counsels on record. Material records perused. This is the suit filed for the relief of declaration of plaintiff's title for suit B-Schedule property and for recovery of possession. These are the petitions filed under section 5 of Indian Limitation Act and under Order 22 Rule 9 of CPC so as to condone the delay in filing this petition for impleading the legal heirs of 1st defendant, and under Order 22 Rule 4 of CPC to implead the legal heirs of 1st defendant so as to conduct the suit. It is the contention of petitioner that the 1st defendant died on 16.12.2021 and 9 to 16 respondents are his legal heirs. The 9 to 16 respondents was set exparte for non appearance before this court. On perusal of records, it is also seen that the plaintiff side evidence was completed and on the side of defendants till DW6 was examined.

10. It is also to be noted that there were no serious objections as to legal heirs of 1st defendant by contesting defendants and proposed parties. According to this court, the scope of this petition is very limited to the extent of allowing the legal heirs to progress the suit. Also, it is the settled proposition of law that the rules are handmade of justice and procedures should not stand as an obstacle for progressing the suit. Therefore, on considering the entire facts and circumstances of the case, this court is of the view that the petitioners herein has right to progress the suit by impleading the legal heirs of the deceased 1st defendant. Hence, this court is inclined to allow this petition so as to render substantial justice and for complete adjudication of issues in the suit.

Result in IA.194/2022:

In the result, this petition is allowed. No costs.

Result in IA.195/2022:

In the result, this petition is allowed. No costs.

Result in IA.196/2022:

In the result, this petition is allowed. No costs.

Dictated to the steno-typist, transcribed by her and typed in computer, corrected and pronounced by me in the open court this the 7th day of March 2023.

(Sd/-S.Suganiyasri)
ADDITIONAL DISTRICT MUNSIF,
CHIDAMBARAM

List of witnesses and documents on the side of the petitioners:

NIL

List of witnesses and documents on the side of the respondents:

NIL

(Sd/-S.Suganiyasri)
ADDITIONAL DISTRICT MUNSIF,
CHIDAMBARAM