

**IN THE COURT OF SUBORDINATE JUDGE,
MADURANTAKAM.**

**Present: Mr. T. GANESH, B.A., B.L.,
Subordinate Judge,
Madurantakam**

**Thursday, this 19th day of June 2025
I.A.No. 390/2019
in
O.S.No. 35/2016
(CNR.No.TNCG13000202-2016)**

1. Amirthavalli (Died)
2. Vedagiri
3. Vasanthi ... Petitioners/Plaintiffs

..Vs..

1. P. Ganesan
2. Sushmadevi
3. Chandan Bala
4. Ektha
5. *Panneerselvam

*(Amended as per order in I.A No. 1/2024 dated: 12.07.2024)
... Respondents/Defendants

This petition coming up for final hearing on 03.06.2025 in the presence of Mr.V.Agoram, Counsel for the petitioners/plaintiffs and Mr.B.Ramnath, counsel for 1st respondent/defendant and Mr. K.Ayyasamy, S.Senthil Kumaran, S.Jothi and V.Mohanraj, counsel for the respondents 2 to 4/defendants 2 to 4 and 5th respondent/defendant called absent and set exparte and after hearing the

arguments on both sides and upon perusing the records, having stood over for the consideration of this court till date, this court delivered the following;

ORDER

This petition is filed by the petitioner under Order XXII Rule 9 of Civil Procedure Code to set aside the abatement of the petition as against the Plaintiff Amirthavalli and permit him to implead the legal heirs of the plaintiff in the petition as Plaintiffs 2 and 3.

2. Petition in brief:

Petitioners are the legal heirs of the late Amirthavalli, the plaintiff. During the pendency of the suit, the original plaintiff, Amirthavalli, died on 28.12.2016, leaving behind the petitioners as her legal heirs. So, the petitioners are recognized to be the legal heirs of the late Amirthavalli in the suit.

Due to ill health, the petitioners cannot able to contact their counsel and file application to implead themselves in time. So, there is a delay and abatement. Respondents in their counter contends that father of the petitioners namely Panneersaelvam was alive and was living at Thiruvanamalai. Hence he was added as party as per order in I.A 1/2021 and impleaded as 5th respondent in this application.

Hence petitioner files this application for set aside the abatement of the petition as against the Plaintiff Amirthavalli and permit him to implead the legalheirs of the plaintiff in the petition as Plaintiffs 2 and 3.

3. Counter of 1st respondent in brief:

1strespondent denies the allegations set out in the affidavit. 1st respondent admits that during the pendency of suit plaintiff Amirthavalli died on 28.12.2016 is true and correct. 1strespondent states that the allegations that the said Amirthavalli died leaving behind the petitioners as her legal heirs at law and that the deceased plaintiff filed the suit for partition against the respondents

and that the petitioners have to be brought on record as plaintiffs 2 and 3 in the above suit and that due to the petitioner ill-health, she could not contact her counsel to inform the death of plaintiff and file the petition to recognize the legal heirs petition and that the suit is became abated now and that there is delay of 251 days in filing the application to set aside the abatement of the suit are denied and the petitioner is put to the strict proof of the same.

Petitioners/proposed plaintiffs 2 and 3 have not disclosed the whereabouts of the husband of the deceased Amirthavalli and father of the petitioners namely Panneerselvam is alive and living in Thiruvannamalai. Petition to implead the petitioners as proposed plaintiffs 2 and 3 without impleading their father Panneerselvam is bad in law and the same is to be dismissed for non-joinder of necessary parties. Petitioner has filed the present petition with ulterior motives and malafide intentions to drag on the proceedings and thereby harass this respondent. Petitioners have not filed any medical records to show that she was affected with ill-health. Hence this petition is liable to be dismissed with costs.

4. Objection of respondents 2nd to 4th in brief:

Respondents 2 to 4 denied the allegations set out in the affidavit that due to illness of the petitioners, he couldn't contact the counsel to inform the death of the plaintiff and to file petition to recognize the legal heirs. Petitioners are the son and daughter of plaintiff Amirthavalli. They knew the pendency of the case and wantonly they didn't take any steps to file the petition to recognize them as legal heirs. Hence, the suit became abated. The petitioners wantonly have failed to file the petition in time. There is no bona fide reason given for setting aside abatement. In the case title, the death of Amirthavalli is not mentioned. Hence, the present petition is not maintainable. There is no bona

fide reason to condone the delay. Absolutely, there is no merit in the petition. Hence this petition is liable to be dismissed with cost.

4. No oral and documentary evidence adduced by both sides.
5. Heard both sides and perused the records.

6. Point:

“Whether the petition can be allowed?”

The petitioner has filed the present application under Order XXII Rule 9 of the Civil Procedure Code seeking to set aside the abatement of the suit as against the original plaintiff, Late Amirthavalli, and to implead the petitioners, being her legal heirs, as Plaintiffs 2 and 3.

The petitioner submits that the original plaintiff, Amirthavalli, passed away on 28.12.2016 during the pendency of the suit. The petitioner and another individual, being the son and daughter of the deceased plaintiff, seek to be impleaded to continue the proceedings. Due to illness the petitioners unable to file application to implead them as party in time. So, this application to set aside the abatement.

The 1st respondent, in the counter, admits the fact of the death of the plaintiff on 28.12.2016 but disputes the claim that the petitioners are the sole legal heirs of the deceased. The respondent raises an objection that the deceased's husband, one Panneerselvam, is still alive and has not been impleaded.

It is pertinent to note that the petitioner amended suitably the application by impleading the alleged father of them. So, the said defence cannot be countenanced.

Upon consideration of the records and the submissions of both parties, it is clear that the death of the original plaintiff during the pendency of the suit is undisputed. The petitioners are her children and prima facie fall within the

definition of legal heirs. Though there is a delay of 222 days in filing the application to set aside the abatement, this Court is satisfied that the petitioner has offered a plausible explanation. The illness cited, even in the absence of detailed medical records, is not wholly unreasonable given the circumstances and is not shown to be deliberate or mala fide.

Apart from that it is pertinent to note that the application in I.A 371/2018, filed under section 5 of Limitation act to condone the delay in filing the application to implead the legal heirs of plaintiff was allowed on 31.07.2019. Hence there cannot be any impediment to allow this application. The Court is also of the view that denying the petitioners the opportunity to prosecute the suit would result in hardship and denial of substantive justice. In view of the above, and considering that no serious prejudice would be caused to the respondents if the petition is allowed, this Court is inclined to set aside the abatement and this point is decided accordingly.

7. Result:-

In the result this application is allowed. No costs.

Directly typed in my personal lap-top, corrected and pronounced by me in the open court, this 19th day of June 2025.

Subordinate Judge,
Madurantakam.

Both sides evidence and Exhibits : Nil.

Subordinate Judge,
Madurantakam.

DRAFT/FAIR ORDER
I.A No. 390/2019
in
O.S No. 35/2016
D.D: 19.06.2025
SUB COURT,
MADURANTAKAM