

IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM

PRESENT: Tmt. V.Devapriya, B.Sc., M.L.,
District Munsif, Madurantakam

Thursday, the 18th day of April, 2024

I.A.No.8/2022, I.A.No.10/2022 and

I.A.No.11/2022

in

O.S.No.113/2013

1. A.J.Balraj
2. A.J.Arulppa

... Petitioners/Plaintiffs

Vs.

1. A.Balthajar
2. Nirmalkumar @ Albert
3. Andrew (died)
4. Emerit (died)
5. Gnanaprakasam
6. The Tahsildhar, Madurantakam
7. The District Collector, Kancheepuram
8. Francis
9. Annammal

...Respondents/Defendants 1 to 9

10. Bernabeth

... Respondent/Proposed 10th Defendant

11. Leema Pastina
12. Minor Keerthi
13. Minor Sinthya

...Respondents/Proposed Defendants 11 to 13

This petition coming up before me on 27.03.2024 for final hearing in the

presence of, Thiru. S.Subramanian, counsel for Petitioners/Plaintiffs and Respondents 1 to 5/Defendants 1 to 5 having been set exparte in the main suit and Thiru. V.Ranganathan, Pleader doing Government work, for Respondents 6 and 7/Defendants 6 and 7 and Respondents 8 and 9/Defendants 8 and 9 having been set exparte in the main suit and Respondents 10 and 11/Proposed Defendants 10 and 11 having been set exparte on 14.03.2023 and Thiru. M.Madhankumar, court guardian for Respondents 12 and 13/Proposed Defendants 12 and 13 and after hearing the arguments on the both sides and upon perusing the materials placed on record and having stood over for consideration till this day, this court delivers the following,

COMMON ORDER

I.A.No.8/2022

This petition has been filed by the Petitioners/Plaintiffs under section 5 under section 5 of Limitation Act, to condone the delay of 1031 days in filing petition to set aside abatement.

I.A.No.10/2022

This petition has been filed by the Petitioners/Plaintiffs under Order XXII Rule 9 of the Code of Civil Procedure, to set aside abatement.

I.A.No.11/2022

This petition has been filed by the Petitioners/Plaintiffs under Order XXII rule 4 of the Code of Civil Procedure to implead the 10th Respondent/10th Defendant as legal heir of 4th Defendant in the above suit

2.The averments stated in the petition in brief :

The Petitioners/Plaintiffs had filed the above suit for permanent injunction. Pending suit, the 4th Defendant Emerit, died intestate on 06.10.2018, leaving his mother Bernabeth as his legal heir. Due to illness and COVID 19 pandemic, the Petitioners/Plaintiffs could not inform the death of the 4th Defendant to this counsel in time. Hence there is a delay of 1301 in filing petition to implead legal heir. Hence these petitions.

3. The averments in the counter filed by the Respondents 12 and 13/Proposed Defendants 12 and 13:

These petitions are not maintainable both in law as well on facts. There is no reason mentioned in the affidavit for the delay of 1301 days in filing legal heir application of deceased 4th Defendant Emerit. Hence all the petitions are liable to be dismissed with costs.

4. The point for determination is whether these petitions are is to be allowed or not?

5. No Exhibits marked and no witnesses were examined on both sides

6. Heard both side enquiry heard and records perused.

7. The Petitioners/Plaintiffs had filed these petitions to set aside the abatement of suit against the 3rd Respondent/3rd Defendant and to condone the delay in filing the petition to set aside and to implead the Respondents 11 to 13 as Defendants 11 to 13. The Respondents 12 and 13/Proposed Defendants 12 and 13 resisted the petition stating that the Petitioner/Plaintiff had not stated sufficient reasons to condone the delay. However, the Petitioner/Plaintiff had stated that due to illness and covid 19 pandemic, they could not inform the death of 4th Respondent/4th Defendant to their counsel. There is no dispute with regard to the legal heirs of 4th Respondent/4th Defendant. The reason stated by the Petitioners/Plaintiffs is sufficient. Hence in the interest of justice this court is inclined to allow this petition

8. In the result, these petitions are allowed on cost of Rs.500/- to be paid by the Petitioners/Plaintiffs to the Respondents 12 and 13/Proposed Defendants 12 and 13, on or before 25.04.2024, failing which these petitions will be automatically dismissed. Call on 25.04.2024.

Dictated to the Stenographer and typed by him and corrected and pronounced by

me in open court on this the 18th day of April, 2024

Sd/-V. Devapriya
18.04.2024
District Munsif
Madurantakam

Petitioners side witnesses and documents:

Nil

Respondents side witnesses and documents:

Nil

Sd/-V. Devapriya
18.04.2024
District Munsif
Madurantakam