

IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM

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

Monday, the 4th day of September, 2023

I.A.No. 9/2023, I.A.No.10/2023 and I.A.No.11/2023

in

I.A.No.1674/2018

in

O.S. No. 305/2012

1. Munusamy Reddiar (died)
2. Rajendran Reddiar
3. M. Santhanakumar
4. M. Baskar
5. Revathy
6. Selvi

...Petitioners/ Petitioners/ Defendants 2 to 6

-vs-

1. Adhilakshmi
2. T.Perumal
3. T.Vedagiri
4. T.Veerasingam
5. Alankaran

...Respondents/ Respondents/ Plaintiffs

6. R.Muniyammal
7. V.Selvakumari
8. V.Periya
9. V.Shanaseelan

..Respondents/ Proposed Respondents

This petition coming up before me on 10.07.2023 for final hearing in the presence of, Thiru.M.Tamilmaran, counsel for the Petitioners/Petitioners/ Defendants 2 to 6 and Thiru.R.E.Charles, counsel for Respondents 1,2,4 and 5/ Respondents 1,2,4 and 5/Plaintiffs 1,2,4 and 5 and Respondents 6 to 9/Proposed Respondents 6 to 9 and the 3rd Respondent/ 3rd Respondent/ 3rd Plaintiff having

been died and after hearing the arguments of 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.9/2023

This petition has been filed by the Petitioners/Petitioners/Defendants 2 to 6, under Section 5 of Limitation Act, to condone the delay of 793 days in filing petition to set aside the abatement against the deceased 3rd Respondent/3rd Respondent/ 3rd Plaintiff.

I.A.No.10/2023

This petition has been filed by the Petitioners/Petitioners/Defendants 2 to 6, under Order XXII Rule 9 of Code of Civil Procedure, to set aside abatement against deceased 3rd Respondent/3rd Respondent/ 3rd Plaintiff, Vedagiri.

I.A.No.11/2023

This petition has been filed by the Petitioners/Petitioners/Defendants 2 to 6, under Order XXII Rule 4 of Code of Civil Procedure, to recognize the Respondents 6 to 9/ Proposed Respondents as legal heirs of deceased 3rd Respondent/ 3rd Respondent/ 3rd Plaintiff, Vedagiri and to implead them as Respondents 6 to 9 in the above I.A.No.1674/2018.

2.The averments stated in the petition in brief:

The 3rd Respondent/ 3rd Respondent/ 3rd Plaintiff died on 01.07.2020, leaving behind his wife Muniyammal and his daughters V.Selvakumari and V.Periya and his son V. Shanseelan, as his legal heirs. Therefore, they have to be impleaded in the above petition. After the death of the said Vedagiri, the Petitioners/Petitioners/Defendants 2 to 6, had not attended the court from 23.03.2020 to December, 2020, due to covid 19 pandemic. Further, the death and legal heir particulars of the said Vedagiri, was not informed to the Petitioners/Petitioners/Defendants 2 to 6. The 2nd Petitioner/ 2nd Petitioner/ 2nd Defendant is a diabetic patient and he had undergone heart surgery. Hence there occurred a delay of 793 days in filing the petition. Hence these petitions.

3.The averments stated in the Counter filed by the 4th Respondent/ 4th Respondent / 4th Plaintiff and adopted by Respondents 1,2 and 5/Respondents 1,2 and 5/ Plaintiffs 1,2, and 5 and Respondents 6 to 9/Proposed Respondents 6 to 9, in brief:

This petition is not maintainable under law. The averments stated in the affidavit are not correct. The 3rd Respondent/3rd Respondent/ Plaintiff died on 01.07.2017 and the legal heir certificate has been issued only at the end of the year 2021. Thereafter, the Respondents /Respondents/Plaintiffs had filed petition to implead the legal heirs of said Vedagiri and they were impleaded in the above suit as per the order in I.A. No.5 of 2022 dated 27.06.2022 and the plaint in the above suit was amended as per order in I.A. No.7 of 2022 dated 19.01.2022, after

giving notice to the counsel for the Petitioners/Petitioners/ Defendants 2 to 6. Hence the Petitioners/Petitioners/ Defendants 2 to 6 are aware of the death of the 3rd Respondent/ 3rd Respondent/ 3rd Plaintiff and wantonly, they had not taken any steps to implead the legal heirs. The number of delay was mentioned as 214 days in the affidavit and 792 days in the prayer and hence the petition is not correct. The reasons stated in the affidavit is false. Hence these petitions are to be dismissed with costs.

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

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

6. Heard both sides and perused the records.

7. The Petitioners/Petitioners/Defendants 2 to 6 had filed these petitions to set aside the abatement against 3rd Respondent/ 3rd Respondent/ 3rd Plaintiff and to implead his legal heirs and to condone the delay in filing the petition to implead the legal heirs of 3rd Respondent/ 3rd Respondent/ 3rd Plaintiff. The Respondents/Respondents/Plaintiffs resisted the petition stating that the Petitioners/Petitioners/Defendants 2 to 6 had wantonly caused delay in filing the petition inspite of the knowledge of the death of the 3rd Respondent/ 3rd Respondent/ 3rd Plaintiff.

8. Perusal of records reveal that the 3rd Respondent/ 3rd Respondent/ 3rd Plaintiff died on 01.07.2020 and the Respondents/Respondents/Plaintiffs had filed I.A. No. 5 of 2022 on 24.03.2022, to implead the legal heirs of 3rd Respondent/ 3rd Respondent/ 3rd Plaintiff, after lapse of two years stating that the covid-19 period was exempted in calculating the limitation period. The said I.A. No. 5 of 2022 was allowed on 27.06.2022 based on the endorsement made by the counsel for the Petitioners/Petitioners/Defendants 2 to 6.

9. Thereafter, the Respondents/Respondents/Plaintiffs had filed two petitions in I.A. No. 7 of 2022, to amend the plaint and I.A. No. 8 of 2022, to amend the above I.A. No. 1674 of 2018. In the above I.A. No. 1674 of 2018, the Petitioners/Petitioners/Defendants 2 to 6 had to take steps and therefore the amendment petition filed in I.A. No. 8 of 2022, to amend the above I.A., was not pressed by the counsel for the Respondents/Respondents/Plaintiffs, based on the representation made by the counsel for the Petitioners/ Petitioners/Defendants 2 to 6 and the same was dismissed as not pressed, on 19.01.2023. Thereafter, the Petitioners/ Petitioners/Defendants 2 to 6 had filed these petitions on 30.01.2023. Hence, having been satisfied that there is sufficient cause and further for complete adjudication and to avoid multiplicity of proceedings, this court is inclined to allow these petitions on costs.

10. In the result, these petitions are allowed on costs of Rs.300/- to be paid by the Petitioners/Petitioners/Defendants 2 to 6, to the Respondents on or before 11.09.2023, failing which, these petitions will be dismissed automatically. Call on 11.09.2023

Typed by me in my laptop, corrected and pronounced by me in open court on this the 4th day of September, 2023

District Munsif
Madurantakam

Petitioner side witnesses and documents:

Nil

Respondent side witnesses and documents:

Nil

District Munsif
Madurantakam