

IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM

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

Monday, the 20th day of March, 2023

I.A.No. 5/2023, I.A.No.6/2023 and I.A.No.7/2023
in
I.A.No.2/2021
in
O.S. No. 117/2021

1. Danusuammal (died)

...Petitioner/Plaintiff

2. Nagaraj
3. Murugan
4. Madhavan
5. Sundari
6. Udhayakumar
7. Menaka

...Petitioners 2 to 7/ Proposed Plaintiffs

-vs-

1. Chandra
2. Kalyani

...Respondents/ Defendants

This petition coming up before me on 23.02.2023 for final hearing in the presence of, Thiru.B.Rajesh, counsel for the Petitioners 2 to 7 /Proposed Plaintiffs and Thiru.V.Agoram, counsel for Respondents/Defendants 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.5/2023

This petition has been filed by the Petitioners 2 to 7/ Proposed Plaintiffs under

Section 5 of Limitation Act, to condone the delay of 142 days in filing petition to set aside the abatement against the deceased Plaintiff.

I.A.No.6/2023

This petition has been filed by the Petitioners 2 to 7/ Proposed Plaintiffs under Order XXII Rule 9 of Code of Civil Procedure, to set aside abatement against deceased 1st Petitioner/Plaintiff Danushammal, who died on 02.02.2022.

I.A.No.7/2023

This petition has been filed by the Petitioners 2 to 7/ Proposed Plaintiffs under Order XXII Rule 3 of Code of Civil Procedure, to recognize the Petitioners 2 to 7/ Proposed Plaintiffs 2 to 7 as legal heirs of deceased Dhanusammal and to implead them as Plaintiffs 2 to 7 in the above I.A.No.2/2021.

2.The averments stated in the petition in brief:

The 1st Petitioner/Plaintiff Dhanusammal had filed the above I.A.No.2/2021 for temporary injunction. Pending suit the 1st Petitioner/Plaintiff Dhanusammal died intestate on 02.02.2022 leaving behind her sons Nagaraj, Murugan and Madhavan as her legal heirs. The another son of 1st Petitioner/Plaintiff, died unmarried on 28.12.2021 and predeceased the 1st Petitioner/Plaintiff. The another son of 1st Petitioner/Plaintiff, Veerapandiyan also predeceased the 1st Petitioner/Plaintiff on 25.10.2014 leaving behind his wife Sundarai, son Udhayakumar and daughter Menaka as his legal heirs.

Hence they are also legal heirs of 1st Petitioner/Plaintiff. As the legal heirs of 1st Petitioner/Plaintiff, the Petitioners/ Proposed Plaintiffs 2 to 7 are entitled for the relief of temporary injunction against the Respondents/Defendants. Except the Petitioners/ Proposed Plaintiffs 2 to 7, there is no legal heirs for 1st Petitioner/Plaintiff. But the 1st Petitioner/Plaintiff was not aware that they should intimate the death and legal heirs particulars of 1st Petitioner/Plaintiff to their counsel. Only when their counsel contacted them through their phone, they had informed the death of 1st Petitioner/Plaintiff to the counsel. Hence there occurred 142 days delay in filing the petition to set aside abatement petition, and to implead the legal heirs of 1st Petitioner/Plaintiff. Hence this petition.

3.The averments stated in the Counter filed by the Respondents/Defendants in brief:

This petition is not maintainable under law and on facts. The avertments stated in the affidavit are not maintainable in law. The Petitioners had not stated any valid reasons in the petition to condone the delay in filing the petition to set aside abatement. Each day delay is not properly explained. Hence this petition is liable 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 2 to 7/Proposed Plaintiffs had filed these petitions to condone the delay of 142 days in filing the petition to set aside the abatement and to set aside the abatement of petition in I.A.No.2/2021 against the 1st Petitioner/Plaintiff and to implead the legal heirs of 1st Petitioner/Plaintiff. The Respondents/ Defendants resisted the petition stating that, the Petitioners had not explained each and every day delay. The Respondents/Defendants had not stated objections with regard to the legal heirs of 1st Petitioner/Plaintiff to reason stated by the Petitioners/Proposed Plaintiffs is that they are not aware that they had to intimate the death of 1st Petitioner/ Plaintiff. The 1st Petitioner/Plaintiff alone has filed the above suit and it is not known whether the other Petitioners are aware of the filing of the suit by the 1st Petitioner/Plaintiff. The Respondents/Defendants also had not stated any averments with regard to the said fact. The reason stated by the Petitioners that, only when their counsel contacted them through their phone, they had informed the death of 1st Petitioner/Plaintiff, is sufficient. Since no prejudice will be caused to the Respondents/Defendants and in the interest of justice, this court is inclined to allow this petition on costs.

8. In the result, these petitions are allowed on costs of Rs.200/- to be paid by the Petitioners 2 to 7/Proposed Plaintiffs to the Respondents/Defendants on or before

27.03.2023, failing which, these petitions will be dismissed automatically. Call on 27.03.2023.

Dictated to the Stenographer and transcribed by her and corrected and pronounced by me in open court on this the 20th day of March, 2023

District Munsif
Madurantakam

Petitioner side witnesses and documents:

Nil

Respondent side witnesses and documents:

Nil

District Munsif
Madurantakam