

IN THE IV ADDITIONAL CITY CIVIL COURT, CHENNAI

Present: Thiru.V.Pandiaraj, B.Sc. B.L.,

IV Additional Judge

Wednesday, the 04th day of December 2024

I.A.No.2 of 2021 and I.A.No.3/2021
in O.S.No.5681/2019
C.N.R.No.TNCH01-024439-2019

I.A.No.2 of 2021

1. S.Sivaraman, (Deceased)
S/o.Late Seetharaman,

...Petitioner/Plaintiff

2. S. Devaki
W/o.S.Sivaraman

3.V.Kavitha,
W/o.Vivekanandan
D/o. S.Sivaraman

4. Geetha
W/o.Murugan
D/o.S.Sivaraman

5.S.Sujatha,
W/o.Suresh,
D/o.S.Sivaraman

6. S.Subashini
W/o.Jayan
D/o.S.Sivaraman

7. S.Senthilkumar
S/o.S.Sivaraman

(Amended as per order in I.A.No.12 of 2023 in I.A.No.2/2021 &
amended as per order in I.A.No.13/2023 in I.A.No.3/2021)

...Petitioners/LRs of Plaintiffs
also in I.A.No.3/2021

versus

1. N.Gobinathan, (Deceased)
S/o.Late Natesan,

2. G.Kamala
w/o.Gobinathan,

3. P.C.Harikumar,
S/o.P.S.Chandrasekaran,

...Respondents 1&2/ Defendants 2&3
also in I.A.No.3/2021

4. G.Sathish Kumar
S/o.N.Gopinathan,

5. G.Sarath Kumar
S/o.N.Gopinathan,

6. G.Suresh Kumar
S/o.N.Gopinathan

...Respondents 3 to 5/proposed
defendants 4 to 6
also in I.A.No.3/2021

These two petitions came up before me for final hearing on 30.09.2024 in the presence of M/s.J.Kamaraj, Magarajothi, K.Raja, J.Poongodi, G.Magesh Counsels appearing for the petitioners/plaintiffs in both petitions and of M/s.G.Sumitra Counsel appearing for the 2nd respondent/2nd defendant and of M/s.A.Arumugam Counsel appearing for the 3rd respondent/3rd defendant and the counsel for the respondents 2, 3 to 6 endorsed no objection in both petitions and upon perusing the entire records of this case, upon hearing the arguments from the counsels for petitioner side having stood over for consideration till this day, this Court passed the following

COMMON ORDER

I.A.No.2/2021

This petition has been filed by the petitioners/plaintiffs to bring on record of the legal representatives of the deceased 1st defendant as detailed below

(i) G.Kamala (wife) who is already on record.

(ii) G.Sathish Kumar (Son) aged 30 years, proposed 4th defendant

(iii) G.Sarath Kumar (Son) aged 28 years, proposed 5th defendant

iv) G.Suresh Kumar (Son) aged 25 years, proposed 6th defendants

all residing at old No.33/4, New No.50, Thiruveethi Amman Koil Street, Koyambedu, Chennai- 600 107 under order XXII Rule 4 of Civil Procedure Code.

I.A.No.3/2021

This petition has been filed by the petitioners/plaintiffs to set aside the abatement caused due to death of the 1st defendant in bringing on record of the legal representatives of the deceased 1st defendant under order XXII Rule 9(2) of Civil Procedure Code.

01. The averments found in the affidavit filed along with the both petition are as follows:-

1.1)The petitioner is the plaintiff in the main suit. He filed the above suit for declaration and possession of the suit property as against defendants 1 to 3 herein. The 1st defendant, N.Gopinathan died on 18.05.2021. The following persons are his legal representatives: (i) G.Kamala (wife) who is already on record.

(ii) G.Sathish Kumar (Son) aged 30 years,

(iii) G.Sarath Kumar (Son) aged 28 years,

(iv) G.Suresh Kumar (Son) aged 25 years,

all residing at old No.33/4, New No.502, Thiruveethi Amman Koil Street, Koyambedu, Chennai- 600 107. In view of the death of the 1st defendant the right to sue survive as against on the above said persons as the legal representatives/class I legal heirs. The 1st defendant died on 18.05.2021 the petition to bring on record ought to have been filed within 90 days thereafter i.e., on or before 16.08.2021. As he sick and also was not in position to get the correct particulars with regard to the age and other details, he could not make the application within the time stipulated. Hence, there is a delay of 51 days filing the application to bring the legal representatives of the 1st defendant, which is neither willful nor wanton. If the delay is not condoned he will be put into irreparable loss and hardship. On the other hand no prejudice will be caused to the other side. Hence prayed to i) set aside the abatement caused in filing application to bring on record of the legal representatives of the deceased 1st defendant ii) bring on record of the legal representatives of the deceased 1st defendant.

02. Point for consideration:

Whether these two applications are to be allowed or not? is the point to be decided herein.

I.A.No.2/2021 is filed by the petitioner/plaintiff under Order XXII Rule 4 CPC to implead the legal heirs of deceased 1st defendant namely Gopinathan/1st Respondent.

I.A.No.3/2021 is filed by the petitioner/plaintiff filed under Order XXII Rule 9(2) CPC to set aside the abatement.

3. On point :

Heard. Records perused.

It is pleaded and argued that the first defendant/R1 namely Gopinathan died 15.02.2021, and hence, this petition is filed on plaintiff side to bring the legal heirs of 1st Respondent/1st Defendant as the defendants 4 to 6 and they are Sathish Kumar, Sarath Kumar and Suresh Kumar respectively. The above said plea was denied by the respondents. Further more, no objection was endorsed on the side of the Respondents No.2, 4 to 6. It is pleaded by the petitioner side counsel that Legal heir application has to be filed on or before 16.08.2021 and the said application was not filed within stipulated time, due to sickness and due to the delay in collecting the particulars of the legal heirs. The above said reasons are found to be acceptable and reasonable one. Since the delay in bringing the legal heirs is found on reasonable grounds, this Court inclined to allow these applications. Hence, these two applications are allowed without costs and this point is answered accordingly.

In the result, these two petitions are allowed without costs.

This Order has been dictated by me to the steno typist, transcribed and computerized by her, corrected and pronounced by me in the open Court on Wednesday, the 04th day of December 2024.

IV Additional Judge,
IV Additional City Civil Court, Chennai.

List of witnesses and exhibits on both petition sides:

Nil.

IV Additional Judge,
IV Additional City Civil Court, Chennai.

IV Additional City Civil
Court, Chennai
Common Draft/Fair Order
in
I.A.No.2/2021 and
I.A.No.3/2021
in O.S.No.5681/2019
Date:04.12.2024.