

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE,
DINDIGUL.

PRESENT : **THIRU. A.K. MEHBUB ALI KHAN, B.L.M., LL.M.,**

PG.D.PM/IR.,

ADDITIONAL DISTRICT JUDGE, DINDIGUL.

Tuesday, the 23rd Day of January 2024

I.A. No.1/2021

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I.A. No.2/2021

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I.A. No.3/2021

-in-

O.S. No.20/2007

1. V. Balu *(died)*
2. S. Muniyappan
3. S. Muniyandi (died)
4. M. Ramesh
5. Gnanasundaram (died)
6. A. Narayanan
7. A. Muthukumar
8. Manohariammal
9. Dhavamani
10. Bhavani
11. Ponnuthai
12. Angala Easwari
13. Dhanalakshmi
14. Nagaraj

15. Nagalakshmi

16. Manivannan

17. Samundeeswari ... Petitioners / Plaintiffs in I.A. No. 1/2021,
I.A. No. 2/2021 & I.A. No. 3/2021

(The plaintiffs 15 to 17 are impleaded as Lrs of deceased 1st plaintiff as per order in I.A. No. 11/2022 dated 01.02.2023)

(This petition is amended as per order in I.A. No. 25 /2023 dated 16.02.2023)

-Vs-

1. K.V.N. Kantharaj

2. K.V.N. Sivakami

3. K.V. Maragatham (died)

4. K.V. Rajam

5. R. Seethalakshmi

6. K.V. Angeshwari

7. K. Ashok Kumar

8. Pitchaiammal (died)

9. S. Pandian

10. S. Kalyanasundaram

11. S. Balasubramanian

12. A. Pandian

13. R. Pandi

14. N. Sivakumar

15. K. Kasiviswanathan

16. Kamatchisundaram

17. Kaleeswari

18. Dhanalakshmi

19. Marudhadurai

20. Sureshraj

21. Manickavalli

22. Ladha
 23. K. Sudha
 24. Santhanalakshmi Respondents / Defendants in I.A. No. 1/2021,
 25. Maragatham I.A. No. 2/2021 & I.A. No. 3/2021
26. Sabitha
 27. Santhy
 28. Vijayalakshmi
 29. Samy ... Respondents 26 to 29 / Proposed parties /
 LR of deceased 3rd defendant in I.A. No.
 1/2021, I.A. No. 2/2021 & I.A. No. 3/2021

This petition came on 12.01.2024 before this Court for final hearing in the presence of Thiru. R. Nadarajan, Advocate for the petitioners, of Thiru. P. Velumani, Advocate for respondents 1 to 6, of Tvl. P. Velumani, S.M. Loganathan, S.R. Velmurugan, Advocates for 7th respondent, 8th respondent died, of Tvl. A. Satharkhan, B. Venketesh, Advocates for respondent 9, 11 subsequently called absent and set exparte, Tvl. A. Satharkhan, B. Venketesh, Advocate for 10th respondent, respondents 12 to 16, 24 and 25 already called absent set exparte in main suit, of Thiru. P. Dhanapandi, Advocate for respondents 17 to 23 subsequently called absent and set exparte, of Tvl. P. Velumani and S. Nirumal Manickam, Advocates for respondents 26, 27 and respondents 28, 29 called absent and set exparte and after hearing the arguments on both sides and upon perusal of records, this Court delivers the following :

I.A.No.1 /2021 & I.A. No. 2/2021 & I.A. No. 3/2021 in O.S.No. 20/2007

COMMON ORDER

1. Petition in I.A. No. 1/2021 is filed by the petitioners under Order 22 Rule 9 of C.P.C. to set aside the abatement.

2. Petition in I.A. No. 2/2021 is filed by the petitioners under Order 22 Rule 4 of C.P.C. to implead the legal representatives of deceased 3rd defendant.

3. Petition in I.A. No. 3/2021 is filed by the petitioners under section 5 of Limitation Act to condone the delay of 1221 days in filing the petition to implead the legal representatives.

4. **The common averments in I. A. Nos. 1/2021, 2/2021 & 3/2021 are in brief:**

The suit is filed by the petitioners /plaintiffs for partition. During the pendency of the suit the 3rd defendant had died on 01.02.2017. This was informed to the court by way of a memo filed by the defendants on 07.02.2017. The details of the legal representatives of deceased 3rd defendant were not given and therefore the petitioners filed a memo seeking the details

of the legal representatives on 09.03.2017. The names of the legal representatives were given by the defendants on 29.06.2017 but their addresses were not given. These petitioners had to search for the addresses and therefore there was a delay of 1221 days in filing the petition to implead the legal representatives of 3rd defendant. This delay is neither willful nor wanton and the legal representatives of deceased 3rd defendant have to be impleaded as defendants D26 to D29 to avoid technical objections. So, the petitioners pray to condone the delay of 1221 days in filing the LR petition and to set aside the abatement and implead the respondents / proposed parties as defendants 26 to 29 in the suit.

5. **The counter filed by 1st respondent and adopted by the respondents**

2, 4 to 7 as in brief:

The respondents have stated that the petitioners have made false allegations that they could not trace the address. The petitioners and the defendants 1 to 7 are close relatives and they attended the funeral of 3rd defendant. The legal representatives reside only in Dindigul and the petitioners know the addresses of the LR's of 3rd defendant 26 to 29. It is absolutely false that it took 1221 days to trace the address. The petitioners have not taken steps to implead the legal representatives for more than 3 years

and the reason for such enormous delay and to set aside the abatement are false and are not acceptable. The petitioners have not filed separate petition to condone the delay in filing the petition to set aside the abatement. Since, there is no just or sufficient reason, the petitions have to be dismissed.

6. Though sufficient opportunities given to the respondents 9, 11, 17 to 23, 26, 27. They have not filed the counter and called absent and set exparte.

7. Point for consideration in these petitions are,

(I) Whether the I.A. No. 1/2021 be allowed ?

(II) Whether the I.A. No. 2/2021 be allowed ?

(III) Whether the I.A. No. 3/2021 be allowed ?

8. Heard both sides elaborately.

9. **POINT NOS (I), (II), (III):**

The petitioners have filed the suit for partition against the defendants. Since, the 3rd defendant died intestate his legal representatives have to be impleaded as defendants so as to have a binding decree. These proposed parties are necessary to the suit for partition and hence they have to be

impleaded as defendants 26 to 29. Though, there is an enormous delay of 1221 days in filing the petition the reason given by the petitioners is quite acceptable. The objections raised by the respondents cannot be sustained as the legal representatives of the deceased 3rd defendant are necessary parties to the suit. However, there is no necessity or requirement to file separate petition to condone the delay in filing the application to set aside the abatement. Since, the petitioners have filed an application to condone the delay in filing the petition to implead the legal representatives, no separate petition need to be filed to condone the delay in filing the abatement set aside petition.

10. It is to be noted that the suit is of the year 2007 and has been pending since a long time without any progress. Being a suit for partition all the legal heirs of the deceased 3rd defendant have to be impleaded and that cannot be questioned by the respondents. Therefore, it is held that the petitions are maintainable and deserve to be allowed. The objections raised by the respondents are not sustainable and hence they are rejected. Thus, it is held that the petition to condone the delay of 1221 days and the petition to set aside the abatement and the petition to implead the LR's of D3 are liable to be allowed. These points are decided accordingly.

I.A. No. 1/2021

In the result, this petition is allowed.

I.A. No. 2/2021

In the result, this petition is allowed.

I.A. No. 3/2021

In the result, this petition is allowed.

Dictated to the stenographer, transcribed and typed by her in computer, corrected and pronounced by me in the Open Court on this the 23rd day of January 2024.

**Additional District Judge,
Dindigul.**