

IN THE COURT OF THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,

NATHAM

Present: Tmt. V. Udayasuriya, M.L.,

District Munsif cum Judicial Magistrate,

Natham.

Dated this Friday, 18th day of August 2023

I.A. No. 100 of 2023 in O.S. No. 39 of 2015

1. Nallammal(died)

2. Bakkirisamy

3. Azhagammal(died)

4. Jeyabal

5. Solaiammal

6. Pushpam

... Petitioners / Plaintiffs

7. Chinnapponnu

8. J.Devi

9.J.Nathiya

10.J.Mahendran

... 7 to 10 Pro Petitioners/7 to 10 Pro Plaintiffs

.. Vs ..

1. Azhagi

2. S.S.Rajendran

3. N.Lakshmi

4. N.Azhagi

5. Raman

6. C.Raman

... Respondents / Defendants

This petition is taken on file on 28.04.2023 and coming before me for final disposal on 17.08.2023 in the presence of Mr.K. Moorthy, the learned counsel appeared for petitioners and R1 to R4 and R6 were remains exparte and Mr. S.S.Ramasubramanian, the learned counsel appeared for 5th respondent and having heard the both side arguments and perusing the documents, this court doth hereby pronounce the following,

ORDER

This petition is filed under section 5 of the Limitation Act, to condone the delay of 1956 days to file a petition under order XXII rule 9 of CPC to set aside the abatement for 4th plaintiff.

Brief averments of the Petition:

1. The petitioners stated that they filed a suit for partition against the respondents/defendants. In the mean time the mean time the 4th plaintiff Jeyabal was died on 18.07.2017 leaving behind his legal heirs. Hence, the petitioner was advised to take steps to implead the legal heirs of the 1st respondent. He stated that the petitioners has reasonable cause to proceed the case and the delay is neither wilful nor wanton. Hence, the petitioner prayed to condone the delay of 1956 days to file an application to set aside the abatement for the deceased 4th plaintiff.

Brief averments of counter statement filed by R5:

2. The respondents in their reply admitted that the 4th plaintiff died on 18.07.2017. But, they contented that this petition was filed after 1947 days without stating any reason for the delay. Hence, the petition is not maintainable and the same is liable to be dismissed.

The point for determination is whether the petition is liable to be allowed:

4. Both side enquiry heard. According to the petitioners the 4th plaintiff Jeyapal died on 18.07.2017 leaving behind the proposed plaintiff 7 to 10 his legal heirs. The same was admitted by all the respondents. The only contention is that the petitioner filed this petition without stating the reason for the 1956 days delay in filing the petition. On perusal of records, the petitioner has not stated a single valid reason for the 1956 days delay in filing this petition. Though the petitioner failed to submit the reasons for delay, since, it is a suit for partition, it is necessary implead the proposed plaintiffs 7 to 10 as parties to decide the case on merits. Hence, this court in the in the interest of justice inclined to allow this petition on condition.

In the result the petition is allowed on condition to pay cost of Rs. 2000/- to the District Mediation centre on or before 25.08.2023 failing which the petition will be stands dismissed automatically. Call on 25.08.2023.

This order is typed by me in my laptop and corrected and pronounced by me in the open court this 18th day of August 2023.

District Munsif cum Judicial Magistrate,
Natham.

Both side oral and documentary evidence: Nil

District Munsif cum Judicial Magistrate,
Natham