

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, 5th day of August 2022
I.A. No. 145 of 2021 in Original Suit No. 36 of 2017

1. Arumugam Chettiar (Died)
2. Kanthasamy Chettiar
3. Anensiya Jeyanthi
(Rep. By her power agent Jeyaseelan) ...Petitioners /Plaintiffs

4. Santha
5. Senthamarai selvi
6. Achi Muthu
7. Gopi
8. Puppy ... Petitioners /Proposed Plaintiffs 4 to 8
..vs..

1. Muthu (died)
2. Mathi
3. Prabhu
4. Raja
5. Satheesh
6. Sivajothi
7. Vellaiammal
8. Veerammal ...Respondents/ Defendants

This petition filed on 21.09.2021 and coming before me for final disposal on 21.07.2022 in the presence of Mr.Raja Ravikumar, the learned counsel appeared for petitioners, Mr. R. Pandi, the learned counsel appeared for respondents 2 to 8 and having heard the both side arguments and perusing the documents, this court doth hereby pronounce the following,

ORDER

1) This petition is filed under section 5 of the Limitation Act, to condone the delay of 222 days to file a petition under order XXII rule 9 of CPC to set aside the abatement.

Brief averments of the Petition:

2) The petitioners stated that they filed a suit for permanent injunction against the respondents and during trial the 1st plaintiff Arumugam died on 13.03.2020 and it is necessary to implead her legal heirs as parties to the suit. The petitioner further stated that due to COVID-19 Pandemic situation, the petitioners are not able to inform her counsel in time. Therefore, the suit against the 1st plaintiff was abated and there was a delay of 222 days to file a petition to set aside the abatement. They stated that they have reasonable cause to proceed the case and the delay is not wilful neither wanton. Hence, they prayed to condone the delay of 222 days to file an application to set aside the abatement.

Brief averments of counter statement filed by R4 and adopted by R2, R3, R5 to R8:

3) The respondent in his reply stated and denied the contention made by the petitioners and he stated that the petitioner has wantonly filed this petition with delay and the petitioners have no merits in their case. Further he stated that all the legal heirs of the 1st respondent/defendant were not added as parties to the suit. Hence, the petition is not maintainable and prays to dismiss the application.

The point for determination is whether the petition deserves any merits:

4) Both sides heard. The petitioner counsel argued that the petitioners due to COVID -19 Pandemic they failed to appear before the court and instruct their counsel in time. Further, he stated that it is only a suit for permanent injunction and it is not necessary to implead all the legal heirs of the 1st respondent as parties to the suit. Only one objector is sufficient to proceed the suit. Hence, the petitioners already added all the necessary parties in the suit. To counter the argument the respondent counsel argued that there is no explanation given by the petitioner for the delay of 222 days. Therefore, prays to dismiss the petition.

5) The petition, counter statement and the suit documents carefully scrutinized. On scrutinizing it was come to know that the 1st Plaintiff Arumugam died on 13.03.2020 and after giving sufficient time to implead the legal heirs of the 1st plaintiff, but the petitioners failed to take steps for 1st plaintiff. Hence, the suit against P1 abated. The petitioner stated that due to COVID -19 Pandemic situation they were failed to inform his counsel about the death of the 1st plaintiff in time. It is true that from 24th March 2020 the COVID -19 is alarming in the country till 2021 and the lock down procedure continues till the year end. Therefore, the reason stated for the delay is acceptable and this court in the interest of justice allow this petition and condone the delay of 222 days in filing petition to set aside the abatement.

In the result the petition is allowed. No cost.

This order is typed by me in my laptop and corrected and pronounced by me in the open court this 5th day of August 2022.

District Munsif cum Judicial Magistrate,
Natham.

Both side oral and documentary evidence: Nil

District Munsif cum Judicial Magistrate,
Natham