

IN THE COURT OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
DHARMAPURI.

Present: Tmt.U.Monica,M.L.,
Additional District Judge,
Dharmapuri.

Tuesday, the 10th day of December 2024

I.A.No.2/2019
in
O.S.No.50/2010

D.V. Krishnan

... Petitioner/plaintiff

/versus/

1. Sundharam (died)
2. Kamalakannan (died)

... Defendants

3. Senbagavalli
4. Chandrasekaran
5. Sujatha
6. Manonmani
7. Hemalatha
8. Sabarinathan

... Respondents/Proposed parties

This petition is coming on 10.12.2024 for final hearing before me in the presence of Mr.T.Nehru, Advocate for petitioner and Mr.S.Umapathy, Advocate for respondents/proposed parties 6 to 8 and respondents/proposed parties 3 to 5 called absent and set exparte and on perusal of the entire case records and having stood over till this day, this court pronounced the following:

ORDER

This petition has been filed under section 5 of Limitation Act to condone the

delay of 122 days in setting aside the abatement order.

2. The case of the petitioner in brief is as follows:

According to petitioner, he has filed the suit for specific performance against first defendant. While the suit was pending, the said Sundharam died on 25.8.2006 leaving behind proposed parties 3 to 5 as his legal heirs. The plaintiff came to know about the death of deceased Sundharam on 3.12.2006, so he filed I.A.No.155/2010 and the same was dismissed. He filed CRP.No.560/2011 before the Honourable Madras High court and the same was allowed on 26.10.2018. He has filed petition to set aside the abatement order and the same has to be taken on file. While so, the second defendant died leaving behind the proposed parties as his legal heirs on 17.12.2018. The petitioner came to know about this only when petition was filed in O.S.No.9/2010. The petitioner ought to have filed this petition within 17.3.2019, however there is a delay of 122 days in setting aside the abatement. Hence the abatement has to be set aside and the petition has to be allowed.

3. The counter filed by the respondent/6th proposed party and adopted by proposed parties 7 and 8 in brief is as follows:

The eighth respondent resisted the petition by contending that all the allegations in the petition are not correct. The petitioner has not stated any valid reason for condoning the delay. Hence the petition has to be dismissed.

4. The point for consideration:

Whether the petition is liable to be allowed or not?

5. No oral or documentary evidence adduced on both side.

6. Point:

6.1) There is a delay of 122 days in filing petition to set aside abatement to implead the legal heirs of deceased second defendant.

6.2) The petitioner alleges that he came to know about the death of the deceased second defendant when petition was filed in connected suit O.S.No.9/2010. there is a delay of 122 days in setting aside the abatement. Hence the abatement has to be set aside and the petition has to be allowed.

6.3) The proposed parties resisted petition by contending that petitioner has not stated any valid reason for condoning the delay. hence the petition has to be dismissed.

6.4) Admittedly in connected suit O.S.No.9/2010 the legal heirs of deceased Kamalakannan have been impleaded. The proposed parties are legal heirs of deceased second defendant, so they are necessary parties to this suit. Hence, in the interest of justice, to provide petitioner an opportunity to prove the case and to prevent multiplicity of proceedings, for proper adjudication of the case, as the delay is only 122 days, this court is of view the petition can be allowed on payment of cost.

In the result, petition is allowed on payment of cost of Rs.1,000/-

to respondents 6 to 8. Cost to be paid on or before 16.12.2024, failing which petition stands dismissed. Call on 17.12.2024.

Dictated by me, typed by the Steno-typist, corrected and pronounced by me in
Open Court on this the 10th day of December 2024.

Additional District Judge,
Dharmapuri.

Petitioners Side Evidence, Exhibits: Nil

Respondents Side Evidence, Exhibits : Nil

Additional District Judge,
Dharmapuri.

Fair Order

I.A.No.2/2019 in

O.S.No.50/2010

Dated:10.12.2024.