

**IN THE COURT OF DISTRICT MUNSIF UTHANGARAI
KRISHNAGIRI DISTRICT**

**Present : Thiru. G. Amar Anand, B.A.LL.B (Hons), LL.M.
District Munsif, Uthangarai**

On this Tuesday, the 5th day of December 2023

I.A.No. 07 of 2023 in O.S.No. 50 of 2013

TNKI13-000008-2013

Ramesh

...Petitioner / Plaintiff

/versus/

1. Murugan
2. Suresh
3. Annamalai (Died)
4. Santhagowri
5. Selvi
6. Chithra
7. Madhavan
8. Kalidhas

...Respondents / Defendants

9. Kanchana

Respondent / Proposed Party

This interlocutory application came up before this Court on 05.12.2023 for final hearing in the presence of advocate Thiru. S. Moorthi, the learned counsel for the petitioner and advocate Thiru. G. Vajjiravel, the learned counsel for the respondents 4 to 8 and the 9th respondent set *ex parte* for non-appearance upon hearing both sides and on perusal of records and having stood over for consideration till date, this Court delivers the following:

ORDER

The application has been filed under Section 5 of the Limitation Act, 1963 for condoning delay of 743 days in filing application to implead the legal heir of the deceased 3rd defendant as party to the suit.

The averments of the petitioner in brief:

1. The petitioner herein is the plaintiff in the suit filed for partition and perpetual injunction against the defendants. The petitioner avers that during the pendency of the suit, the 3rd defendant namely Annamalai died on 06.05.2021 and the legal heirs of the deceased 3rd defendant are the plaintiff, the 1st defendant, 2nd defendant and one Kanchana. The petitioner avers that the plaintiff, the 1st defendant, 2nd defendant are already parties to the suit and it is necessary to file an application before 150 days to implead Kanchana, who is daughter of the deceased 3rd defendant as party to the suit. The petitioner avers that he is working in Coimbatore and that he was unable to file an application to implead the legal heir of the deceased 3rd defendant as party to the suit on time. The petitioner prays for allowing this application and condone the delay of 743 days in filing application to implead the legal heir of the deceased 3rd defendant as party to the suit.

The averments of the respondents in brief:

2. The respondents deny that averments of the petitioner as false and frivolous. The respondents aver that the suit was filed for partition and perpetual injunction against the defendants. The respondents aver that during the pendency of the suit, the 3rd defendant namely Annamalai died on 06.05.2021 and the legal heirs of the deceased 3rd defendant are the plaintiff, the 1st defendant, 2nd defendant and one Kanchana. The respondents aver that the plaintiff, the 1st defendant, 2nd defendant are already parties in the suit and it is necessary to file an application before 150 days to implead Kanchana the legal heir, who is daughter of the deceased 3rd defendant as party to the suit. The respondents aver that the 3rd defendant died on 06.05.2021 and the petitioner has filed this application after 2 years only to prolong the proceedings. Hence, the respondents seek for dismissal of the application.

Point for consideration:

3. Whether this application is liable to be allowed?

Evidence:

4. Neither of the parties to this application has adduced any oral or documentary evidence.

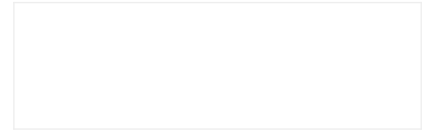
Discussion:

5. This Court, having considered the arguments advanced on both sides and thoroughly examined the pertinent case records, proceeds to delineate its findings by the following discussion. This suit has been instituted for partition and perpetual injunction. This application is filed to condone delay of 743 days in filing application to implead the legal heir of the deceased 3rd defendant as party to the suit. A perusal of the case proceeding would show that the 3rd defendant died on 06.05.2021 and the same was intimated to this Court on 05.10.2023. The respondents have admitted the date of death of the 3rd defendant and the legal heirship of Kanchana as true and there is no dispute with regard to these. The only objection raised by the respondents are that this application is filed to prolong and delay the proceedings. The petitioners seek to condone delay of 743 days in filing application to implead the legal heir of the deceased 3rd defendant as party to the suit. Since the death of the 3rd defendant and the legal heirship of the Kanchana are admitted and the nature of the suit being partition, this Court is of considered view that the objection of the respondents is only perfunctory in nature and this Court is inclined to allow this application.

Result:

6. ***As a result, this application is allowed. No cost.***

This order was dictated to the steno-typist and transcribed by her on computer and after rectification of mistakes, pronounced by me in open court on this 5th day of December 2023.



District Munsif
Uthangarai

Annexure

Petitioner side evidence

Petitioner side Witnesses: Nil

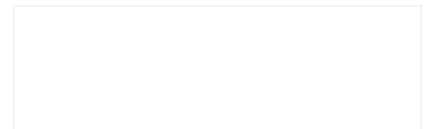
Petitioner side Exhibits: Nil

Respondent side evidence

Respondent side Witnesses: Nil

Respondent side Exhibits: Nil

Court Documents: Nil



District Munsif
Uthangarai