

**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. 08 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 9<sup>th</sup> 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 Order XXII Rule 9 of the Code of Civil Procedure, 1908 for setting aside the abatement of the suit as against the deceased 3<sup>rd</sup> defendant.

***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 3<sup>rd</sup> defendant namely Annamalai died on 06.05.2021 and the legal heirs of the deceased 3<sup>rd</sup> defendant are the plaintiff, the 1<sup>st</sup> defendant, 2<sup>nd</sup> defendant and one Kanchana. The petitioner avers that the plaintiff, the 1<sup>st</sup> defendant, 2<sup>nd</sup> 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 3<sup>rd</sup> 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 3<sup>rd</sup> defendant as party to the suit on time. The petitioner prays for allowing this application and to set aside the abatement of the suit as against the deceased 3<sup>rd</sup> defendant.

***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 3<sup>rd</sup> defendant namely Annamalai died on 06.05.2021 and the legal heirs of the deceased 3<sup>rd</sup> defendant are the plaintiff, the 1<sup>st</sup> defendant, 2<sup>nd</sup> defendant and one Kanchana. The respondents aver that the plaintiff, the 1<sup>st</sup> defendant, 2<sup>nd</sup> 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 3<sup>rd</sup> defendant as party to the suit. The respondents aver that the 3<sup>rd</sup> 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.

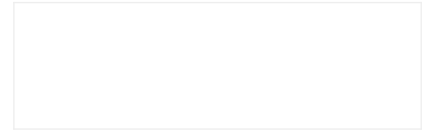
***Discussion:***

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 set aside the abatement of the suit as against the deceased 3<sup>rd</sup> defendant. A perusal of the case proceeding would show that the 3<sup>rd</sup> 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 3<sup>rd</sup> 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 set aside the abatement of the suit as against the deceased 3<sup>rd</sup> defendant. Since the death of the 3<sup>rd</sup> 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. The abatement of the suit as against the 3<sup>rd</sup> defendant is set aside.***

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  
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**Annexure**

**Petitioner side evidence**

Petitioner side Witnesses: Nil

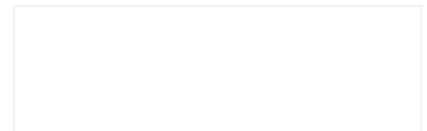
Petitioner side Exhibits: Nil

**Respondent side evidence**

Respondent side Witnesses: Nil

Respondent side Exhibits: Nil

**Court Documents:** Nil



District Munsif  
Uthangarai