

**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 Monday, the 17th day of February 2025

I.A.No. 04 of 2024 and I.A.No. 05 of 2024 in O.S.No. 22 of 2021

TNKI13-000017-2021

1. Sarala
2. Selvi

...Petitioners / Plaintiffs

/versus/

1. Sivalingam (Died)
2. Velmurugan
3. Tahsildar, Uthangarai
4. Revenue Divisional Officer, Krishnagiri
5. District Collector, Krishnagiri

...Respondents / Defendants

6. Vasantha
7. Jayammal
8. Saritha

...Respondents / Proposed Parties

These interlocutory applications came up before this Court on 17.02.2025 for final hearing in the presence of advocate Thiru. M. Murugesan, the learned counsel for the petitioners and advocate Thiru. S. Moorthi, the learned counsel for the respondents 2, 6 to 8 and the respondents 3 to 5 already set *ex parte* in the suit and upon hearing both sides and on perusal of records and having stood over for consideration till date, this Court delivers the following:

COMMON ORDER

The application in I.A.No. 04 of 2024 has been filed under Order XXII Rule 9 of the Code of Civil Procedure, 1908 for setting aside the abatement of suit as against the 1st defendant.



The application in I.A.No. 05 of 2024 has been filed under Order XXII Rule 4 of the Code of Civil Procedure, 1908 for impleading the legal representatives of the deceased 1st defendant as parties to the suit.

The averments of the petitioners in brief in both applications:

1. The petitioners herein are the plaintiffs in the suit and aver that the 1st defendant namely Sivalingam died on 08.07.2024 and the respondents filed memo about the death of the 1st defendant. The petitioners aver that the 2nd & 6th to 8th defendants and one Sivasankar are the legal heirs of the deceased 1st defendant and Velmurugan is the 2nd defendant in the suit. The petitioners aver that an application has been filed to implead Sivasankar as a party to the suit and the same was numbered as I.A.No. 03 of 2024 and is pending and it is necessary to implead the proposed parties as the defendants to the suit. The petitioners aver that there is a delay of 27 days in filing application to implead the legal heirs of the deceased 1st defendant and the delay is neither willful nor wanton as the case bundle was mixed up with other bundles in the advocate office. Hence, the petitioners pray to set aside the abatement as against the deceased 1st defendant and to implead the legal heirs of the deceased 1st defendant as parties to the suit and prays for allowing these applications.

The averments of the 2nd & 6th to 8th respondents in brief in both applications:

2. The respondents deny the averments of the petitioners in toto and admit that the 1st defendant Sivalingam died on 08.07.2024 and that and that the 2nd defendant Velmurugan, Sivasankaran, Vasantha, Jeyammal, Saritha are the legal heirs. The respondents aver that the suit would abate if an application under Order XXII Rule 4 of the Code of Civil Procedure, 1908 is not filed within 90 days and not 60 days. But the petitioners have filed these applications claiming that the suit would abated within 60 day which is false and these applications are to be dismissed in *limine*. The respondents further aver that these applications are filed only to prolong the suit and



delay the proceedings with an intention to beleaguer the respondents and seek for dismissal of these applications.

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. These applications have been filed by the plaintiffs to implead the legal heirs of the deceased 1st defendant namely Sivalingam. It is the case of the petitioners that the proposed parties namely the 2nd defendant, Vasantha, Jeyammal, Saritha and one Sivasankar are the legal heirs of the deceased 1st defendant and that an application in I.A.No. 03 of 2024 is pending before this Court for impleading the said Sivasankaran. It is the further case of the petitioners that the case bundle was mixed with other bundles in the advocate office and that the applications were unable to be filed within 60 days. The respondents have admitted that the said Sivalingam died on 08.07.2024 and that the 2nd defendant Velmurugan, Sivasankaran, Vasantha, Jeyammal, Saritha are the legal heirs. However, the respondents have resisted these applications that the suit would abate only if an application under Order XXII Rule 4 of the Code of Civil Procedure, 1908 is not filed within 90 days. But the petitioners have averred that suit abates after 60 days which is false and these applications are to be dismissed in *limine*. Further, the respondents have objected that these applications are filed only to prolong the suit and delay the



proceedings with an intention to beleaguer the respondents. A perusal of the records would show that the 1st defendant namely Sivalingam has died on 08.07.2024 and the learned counsel for the defendants filed memo on 29.07.2024 intimating his death to this Court. Consequently, the petitioners have filed these applications to implead the legal heirs. Article 120 of the I schedule of the Limitation Act, 1963 clearly states that the legal representatives are to be impleaded within 90 days from the date of death and the suit shall abate if failed to do so. An application to set aside the abatement ought to be filed within 60 days from the date of the abatement. However, in this case, the 1st defendant has died on 08.07.2024, and hence, his legal representatives ought to have been impleaded on or before 06.10.2024. However, no such application was made and the suit would be deemed to have abated and the said application was filed along with the application under Order XXII Rule 9 of the Code of Civil Procedure, 1908 on 17.10.2024. Hence, it is clear that the petitioners have filed proper applications but has only averred as if the application to implead the legal representative ought to be filed within 60 days. This Court is of considered view that the same is only an inadvertent mistake and the objections are only perfunctory in nature. The death of the 1st defendant and the legal heirship of the proposed parties are admitted by the defendants. That being admitted and this suit being for declaratory relief, this Court is of considered view that the reasons are found satisfactory and the objections are only perfunctory in nature and this Court is inclined to allow these applications.

Result:

6. As a result, these applications are allowed as follows:

(1) I.A.No. 04 of 2024 is allowed, and the abatement of the suit as against the 1st defendants is set aside.



(2) I.A.No. 05 of 2024 is allowed, and the legal representatives of the deceased 1st defendant are impleaded as defendants to the suit.

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 17th day of February 2025.

Sd/-
Thiru. G. Amar Anand, B.A.LL.B (Hons), LL.M.

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

Sd/-
Thiru. G. Amar Anand, B.A.LL.B (Hons), LL.M.

District Munsif
Uthangarai