

**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 Thursday, the 16th day of February 2023

I.A.No. 06 of 2020 in O.S.No. 112 of 2013

TNKI13-000045-2013

Santhi

...Petitioner / Plaintiff

/versus/

1. Manickam (Died)
2. Velu
3. Thirumal
4. Vasantha
5. Chandiramathi

...Respondents 1 to 4 / Defendants

...5th Respondent / Proposed Party

This interlocutory application came up before this Court on 16.02.2023 for final hearing in the presence of advocate Thiru. K. Murugan, the learned counsel for the petitioner and advocate Thiru. S. Moorthi, the learned counsel for the 4th respondent and advocate Thiru. G.M. Saravanan, the learned counsel for the 3rd respondent and advocate Thiru. M. Sakthivel, the learned counsel for the 5th respondent and the 2nd respondent set *ex parte* for non-appearance and 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 1st defendant.



The averments of the petitioner in brief:

1. The petitioner herein is the plaintiff in the suit instituted for partition and perpetual injunction and aver that the father of the petitioner who is the 1st defendant namely Manickam died on 20.06.2020 and the son and daughter of the deceased 1st defendant namely the 2nd and the 3rd defendants are already parties to the suit. The petitioner avers that the wife of the deceased 1st defendant namely Chandiramathi has to be added as a party to the suit for complete adjudication of the dispute. The petitioner avers that due to COVID-19 curfew, the petitioner was unable to instruct the counsel for filing application within the period of limitation. Hence, the petitioner prays for allowing this application and set aside the abatement of the suit as against the deceased 1st defendant.

The averments of the respondents 3 to 5 in brief:

2. The respondents 3 to 5 have filed different counters but taking the same stand which are stated briefly as follows. The respondents admit that the 1st defendant died on 20.06.2020 and that the 2nd and 3rd defendants are the son and daughter of the deceased 1st defendant and that the proposed party namely Chandramathi is the wife of the 1st defendant. The respondents aver that the petitioner has wantonly failed to file application within time and has filed this application only to prolong the proceedings and seek for dismissal of the application.

The non-appearance of the 2nd respondent:

3. The notice to the 2nd respondent was duly served and the 2nd respondent was set *ex parte* for non-appearance on 15.04.2021.

Point for consideration:

4. Whether this application is liable to be allowed?



Evidence:

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

Discussion:

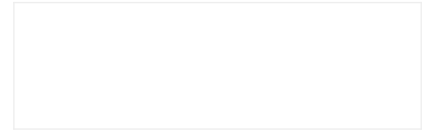
6. This Court heard both sides and perused case records. This suit has been instituted for partition and perpetual injunction restraining alienation of the suit properties and for declaration of a registered sale deed as null and void. During the pendency of the suit, the 1st defendant namely Manickam died on 20.06.2020 and a representation was made to this Court on 18.11.2020. Pursuant to the same, this application has been filed. The death of the 1st defendant and the legal heirship of the proposed party have been readily admitted by the respondents in their counters and the respondents have raised only perfunctory objections. Considering the extraordinary situation prevailing due to COVID -19, this Court is of considered view that the reason assigned by the petitioner is acceptable. Further, considering the nature of the suit being partition, this Court is of considered view that all the legal heirs who have share in the suit properties have to be added as parties to the suit despite whether any claim is made or not. Hence, this Court is inclined to allow this application.

Result:

7. As a result, this application is allowed and the abatement of the suit as against the deceased 1st defendant is set aside. No cost.



This order was dictated to the typist and transcribed by her on computer and after rectification of mistakes, pronounced by me in open court on this 16th day of February 2023.



District Munsif
Uthangarai

Annexure

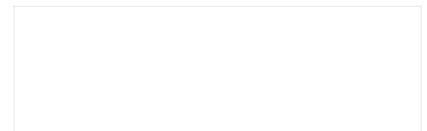
Petitioner side evidence

Petitioner side Witnesses & Exhibits: Nil

Respondent side evidence

Respondent side Witnesses & Exhibits: Nil

Court Documents: Nil



District Munsif
Uthangarai