

**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 1st day of April 2024

I.A.No. 04 of 2023 in O.S.No. 34 of 2020

TNKI13-000050-2020

1. T.C. Narayanan (Died)
2. Devika
3. Ravichandiran

...Petitioners / Plaintiffs

/versus/

1. Chinnathambi
2. Sakthivel
3. Palani
4. Venkatesan

...Respondents 1 to 4 / Defendants

5. Vijaya
6. Malarvizhi
7. Anandhi

...Proposed Parties / Respondents 5 to 7

This interlocutory application came up before this Court on 25.03.2024 for final hearing in the presence of advocate Thiru. S. Moorthi, the learned counsel for the petitioner and the respondents were set *ex parte* for non-appearance and upon hearing petitioner side 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 1st plaintiff.

The averments of the petitioner in brief:

1. The petitioners herein are the plaintiffs to the suit filed for declaration and perpetual injunction against the defendants. The petitioners aver that during the



pendency of the suit, the 1st plaintiff namely T.C. Narayanan died on 15.01.2023 and his wife namely Meenakshi died in the year of 2020 and the legal heirs of the 1st plaintiff are Ravichandiran, Venkatesan, Vijaya, Malar, Anandhi. The petitioner avers that Ravichandiran (3rd plaintiff) and Venkatesan (4th defendant) are already mentioned in the suit and it is necessary to file an application before 150 days to implead the other legal heirs of the 1st plaintiff namely Vijaya, Malarvizhi and Anandhi as parties to the suit. The petitioner avers that he was suffering from viral fever and he was saddened by death of his father (1st Plaintiff), and he was unable to file an application to implead the legal heirs of the deceased 1st plaintiff and the delay is neither willful nor wanton. Hence, the petitioner prays for allowing this application and to set aside the abatement of the suit as against the 1st plaintiff.

The non-appearance of the respondents:

2. The service of the notices to the 5th, 6th, 7th respondents were deemed proper and the 1st respondent set *ex parte* on 23.02.2024 for non-appearance. The 5th and 6th respondents appeared, and subsequently, set *ex parte* on 19.03.2024 for non-appearance.

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 petitioner side and thoroughly examined the pertinent case records, proceeds to delineate its findings by

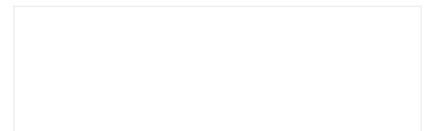


the following discussion. This suit has been instituted for declaration and perpetual injunction. This application is filed to set aside the abatement of the suit as against the 1st plaintiff. A perusal of the case proceeding would show that the 1st plaintiff namely T.C. Narayanan died on 15.01.2023 and the same was intimated to this Court on 13.09.2023. Hence, the petitioners have come up with this application to set aside the abatement of the suit as against the 1st plaintiff. The reason assigned by the petitioner is that he was suffering from viral fever and was saddened by death of his father (1st Plaintiff). Even though the petitioner has not assigned any sufficient evidence for condoning the delay, the respondents have also equally not appeared or raised any objection as to the legal heirship of the proposed parties. Hence, this Court is of considered view that taking into account of nature of the suit and in order to avoid further delay in proceedings and to avoid multiplicity of proceedings, there will be no harm to the respondents in allowing this application. As the respondents have not raised any objection as to the death of the 1st plaintiff and legal heirship of the respondents 5 to 7, 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 1st plaintiff 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 1st day of April 2024.



District Munsif
Uthangarai



Annexure

Petitioner side evidence

Petitioner side Witnesses: Nil

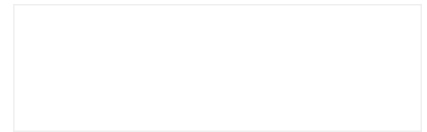
Petitioner side Exhibits: Nil

Respondent side evidence

Respondent side Witnesses: Nil

Respondent side Exhibits: Nil

Court Documents: Nil



District Munsif
Uthangarai