

**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 2nd day of January 2024

I.A.No. 05 of 2023 in O.S.No. 39 of 2019

TNKI13-000068-2019

1. Ramasami
2. Chennammal
3. Amaravathi

...Petitioners / Plaintiffs

/versus/

1. Tholan (Died)
2. Sindhamani
3. Chennammal
4. Neduncheliyan
5. Chennammal
6. Selvam
7. Selvarani
8. Vinoth
9. Kesavan
10. Dhanapal
11. Murugan
12. Thirupathi
13. Manni

...Respondents 2 to 13 / Defendants

14. Venkatesan
15. Karunanithi
16. Vetrivel
17. Sakkarabani
18. VEDIYAMMAL
19. Dheivanai
20. Valli

...Respondents 14 to 20 / Proposed Parties

This interlocutory application came up before this Court on 22.12.2023 for final hearing in the presence of advocate Thiru. E. Lakshmanan, the learned counsel for the petitioner and advocate Thiru. K. Murugan, the learned counsel for the respondents 13 to 20 and the respondents 2 to 12 were 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 Section 5 of Limitation Act, 1963 to condone the delay of 389 days in filing applications to implead the legal representatives of the deceased 1st defendant as defendants in the suit.

The averments of the petitioner in brief:

1. The petitioners herein are the plaintiffs in the suit filed for partition, declaration of document as null and void and perpetual injunction and aver that when the suit was pending the 1st defendant namely Tholan died on 23.03.2022 and the issues of the 1st defendant namely Venkatesan, Karunanithi, Vetrivel, Sakarabani, VEDIYAMMAL, Deivanai, Valli are the legal heirs of the 1st defendant and have to be added as parties to the suit. Hence, the petitioners pray for allowing this application and condone the delay in making applications to set aside abatement and to implead the legal representatives of the deceased 1st defendant.

The non-appearance of the respondents:

2. The notices to the respondents 2 to 12 were duly served and were set *ex parte* for non-appearance on 15.11.2023.

The averments of the respondents 14 to 20 in brief:

3. The respondent aver that the petitioner has filed this application to condone the delay of 389 days in impleading the legal heirs namely Venkatesan, Karunanithi, Vetrivel, Sakarabani, VEDIYAMMAL, Deivanai, Valli as defendants 14 to 20 upon the death of 1st defendant on 23.03.2022. The respondents aver that the petitioner has not assigned any reason as to why the application was not filed on time and seek for dismissal of the application.

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.

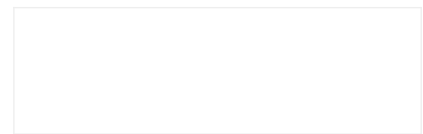
Discussion:

6. This Court, 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, separate possession of suit properties and for declaration of registered instruments as null and void and for perpetual injunction. While the suit was pending for trial, the 1st defendant died on 23.03.2022 and the same was intimated to this Court on 28.02.2023. Subsequently, the applications for impleading the legal heirs of the deceased 1st defendant has been filed along with this application to condone the delay. A perusal of the averments show that the death of the 1st defendant as well as the legal heirship of the proposed parties is not disputed by the contesting respondents, who are the proposed parties, except for bare denial. Since the suit has been instituted for partition, it is necessary that all parties, who are or claim to be legal heirs entitled to inherit the estate of the deceased 1st defendant, have to be impleaded as parties irrespective of the legal heir claiming a share for himself or not. Since there is no dispute with respect to the death of the 1st defendant and the legal heirship of the respondents 14 to 20 and the objection being only perfunctory in nature, this Court is inclined to allow this application without any cost.

Result:

7. As a result, this application is allowed. No cost. The delay of 389 days in making application to set aside abatement and to implead the legal representatives of the deceased 1st defendant is condoned.

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 2nd day of January 2024.



District Munsif
Uthangarai

Annexure

Petitioner side evidence

Petitioner side Witnesses: Nil

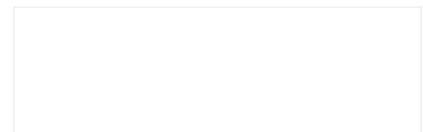
Petitioner side Exhibits: Nil

Respondent side evidence

Respondent side Witnesses: Nil

Respondent side Exhibits: Nil

Court Documents: Nil



District Munsif
Uthangarai