

**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. 06 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 Order XXII Rule 9 and Section 151 of Code of Civil Procedure, 1908 for setting aside the abatement of the suit as against the 1<sup>st</sup> defendant upon failure to implead the legal representatives of the deceased 1<sup>st</sup> defendant.

***The averments of the petitioners in brief:***

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

***The non-appearance of the respondents:***

2. The notice 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 application in impleading the legal heirs namely Venkatesan, Karunanithi, Vetrivel, Sakarabani, VEDIYAMMAL, Deivanai, Valli as defendants 14 to 20 upon the death of 1<sup>st</sup> 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.

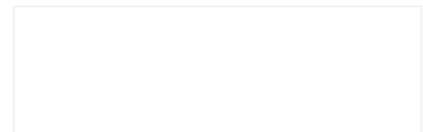
***Discussion:***

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 1<sup>st</sup> 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 1<sup>st</sup> defendant has been filed along with application to condone the delay. A perusal of the averments show that the death of the 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> defendant, the delay being condoned 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 abatement of the suit as against 1<sup>st</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 2nd day of January 2024.



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**Annexure**

**Petitioner side evidence**

Petitioner side Witnesses: Nil

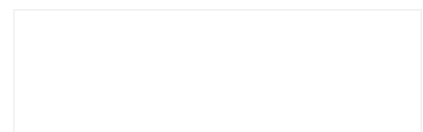
Petitioner side Exhibits: Nil

**Respondent side evidence**

Respondent side Witnesses: Nil

Respondent side Exhibits: Nil

**Court Documents:** Nil



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