

**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 6th day of April 2023

I.A.No. 06 of 2022 in O.S.No. 70 of 2019

TNKI13-000120-2019

Subramani

...Petitioner / Plaintiff

/versus/

1. Manickam (Died)
2. Village Administrative Officer, Nochipatti
3. Tahsildar, Uthangarai
4. Block Development Officer, Uthangarai
5. District Collector, Krishnagiri

...Respondents 1 to 5 / Defendants

6. Velu
7. Thirumal

...Respondents 6, 7 / Proposed Parties

This interlocutory application came up before this Court on 09.03.2023 for final hearing in the presence of advocate Thiru. S.Moorthi, the learned counsel for the petitioner and advocate Thiru. G.M. Saravanan, the learned counsel for the 6th & 7th respondents and the 2nd to 5th respondents 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:

ORDER

The application has been filed under section 5 of the Limitation Act, 1963 for condoning the delay of 643 days in filing applications to implead the legal heirs of the deceased 1st defendant.

The averments of the petitioner in brief:

1. The petitioner herein is the plaintiff in the suit which was instituted for perpetual injunction and avers that during the pendency of the suit, the 1st defendant namely Manickam died on 20.06.2020, and his sons namely Velu, Thirumal are his legal heirs. The petitioner avers that the petitioner was unable to implead the legal heirs within 150 days and there is a delay of 643 days, and avers that the delay is neither willful nor wanton and only due to COVID-19 pandemic. Hence, the petitioner pray for allowing this application to condone the delay of 643 days in filing applications to implead the legal heirs of the deceased 1st defendant.

The averments of the 6th & 7th respondents in brief:

2. The respondents deny the averments of the petitioner in toto and aver that the petitioner has filed this application with false averments and to prolong the suit proceedings. The respondents admit that the 1st defendant namely Manickam has deceased, however, deny that only the 6th and 7th respondents namely Velu and Thirumal are the legal heirs of the said Manickam. The respondents aver that their sister namely Shanthi is also a legal heir. The respondents aver that the petitioner has not included her in this application and has falsely averred COVID-19 pandemic as the reason for delay and is liable to be dismissed in *limine*. The respondents aver that the petitioner has also not assigned any reason for the delay and has also not included all the legal heirs, and the application is liable to be dismissed and seek for dismissal of the application.

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 heard both sides and perused case records. This suit has been instituted for declaration of title of the petitioner and for perpetual injunction restraining the 1st defendant from interfering with the petitioner's possession by paving any road in the suit property. A perusal of the case records would show that during the pendency of the suit, the 1st defendant died on 20.06.2020, and a representation was made to that effect to this Court on 09.12.2020. Consequently, this has been filed by the petitioner to condone the delay of 643 days in filing applications to implead the legal heirs of the deceased 1st defendant. The respondents have admitted the death of the 1st defendant and legal heirship of them, however, have further averred that there is another legal heir namely Shanthi who is the sister of the proposed parties and the respondents have sought this Court to dismiss the application for non-joinder of necessary party. However, the respondents have not produced any documentary evidence, such as legal heirship certificate or other documents, to show that the said is a necessary party or to show her relationship with the deceased 1st defendant though averred to have annexed the same. It is a settled position of law mere pleadings alone cannot form proof of any fact, and further, the respondents have also not furnished any details such as her addresses or other details for effecting any notice so as to confirm her existence and to consider the plea of non-joinder of necessary party. Hence, this Court is of the considered view that the objections are only vague and perfunctory in nature. Further, it is a settled position of law that the determination of legal representatives under Order XXII of the Code of Civil Procedure, 1908 is summary in nature and that it is not a conclusive

determination of the legal heirship of the parties and such issues could very well be adjudicated in the suit as well. The Honourable Supreme Court has reiterated this principle in various precedents such as *Daya Ram v. Shyam Sundari*,¹ *Jaladi Suguna v. Satya Sai Central Trust*,² *Suresh Kumar Bansal v. Krishna Bansal*,³ *Varadarajan v. Kanakavalli*.⁴ Hence, this Court is of the considered view that this application cannot be dismissed on basis of an unestablished plea of non-joinder of necessary party. Hence, this Court is inclined to allow this application.

Result:

6. ***As a result, this application is allowed. In the interest of justice 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 6th day of April 2023.

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Annexure

Petitioner side evidence

Petitioner side Witnesses & Exhibits: Nil

Respondent side evidence

Respondent side Witnesses & Exhibits: Nil

Court Documents: Nil

District Munsif
Uthangarai

1 Daya Ram v. Shyam Sundari, AIR 1965 SC 1049

2 Jaladi Suguna v. Satya Sai Central Trust, (2008) 8 SCC 521.

3 Suresh Kumar Bansal v. Krishna Bansal, (2010) 2 SCC 162.

4 Varadarajan v. Kanakavalli, AIR 2020 SC 740.