

**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 Friday, the 18th day of August 2023

I.A.No. 07 of 2023 and I.A.No. 08 of 2023 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

These interlocutory applications came up before this Court on 18.08.2023 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:

COMMON 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 defendant.

The averments of the petitioner in brief in both applications:

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 90 days and the suit has abated, and avers that the delay is neither willful nor wanton and pray for allowing these applications to set aside the abatement of the suit and to implead the legal heirs of the deceased 1st defendant.

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

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 and the wife of the 1st defendant namely Chandramathi are also legal heirs. The respondents aver that the petitioner has not included them in these applications and these applications are not sustainable and are 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 applications are liable to be dismissed and seek for dismissal of the applications.

Point for consideration:

3. Whether these applications are 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, these applications have been filed by the petitioner to set aside the abatement of the suit as against the 1st defendant and to implead the proposed parties as the defendants in the suit. The respondents have admitted the death of the 1st defendant and legal heirship of them, however, have further averred that there are other legal heirs namely Shanthi and Chandramathi who are the daughter and wife of the deceased 1st defendant respectively and the respondents have sought this Court to dismiss the applications for non-joinder of necessary parties. However, the respondents have not produced any documentary evidence, such as legal heirship certificate or other documents, to show that the said Shanthi and Chandramathi are necessary parties or to show their relationship with the deceased 1st defendant. 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 their addresses or other details for effecting any notice so as to confirm their existence and to consider the plea of non-joinder of necessary parties. 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 these applications cannot be dismissed on basis of an unestablished plea of non-joinder of necessary parties. Hence, this Court is inclined to allow these applications.

Result:

6. *As a result, the applications are allowed without cost as follows:*

(1) *I.A.No. 07 of 2023 is allowed without cost, and the abatement as against the deceased 1st defendant is set aside, and*

(2) *I.A.No. 08 of 2023 is allowed without cost, and the proposed parties are added as the defendants in the suit.*

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 18th day of August 2023.

District Munsif
Uthangarai

Annexure

Petitioner side evidence

Petitioner side Witnesses: Nil

Petitioner side Exhibits: Nil

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.

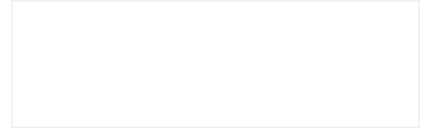
4 Varadarajan v. Kanakavalli, AIR 2020 SC 740.

Respondent side evidence

Respondent side Witnesses: Nil

Respondent side Exhibits: Nil

Court Documents: Nil



District Munsif
Uthangarai