

**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 17th day of August 2023

I.A.No. 02 of 2020 in O.S.No. 66 of 2016

TNKI13-000798-2016

1. Govindhan
2. Ganesan
3. Subramani

....Petitioners / Plaintiffs

/versus/

1. Jadaiyan
2. Thirupathi
3. Suruttaiya Gounder
4. Rani
5. Lakshmi
6. Kuppu (Died)
7. Jaya
8. Parvathi
9. Periya Lingammal
10. Gudiyappan (Died)
11. Osarayan
12. Murugan
13. Ramakkal
14. Lingammal
15. Suresh
16. Veerapathiran
17. Minor. Boopathi*
18. Rajesh
19. Minor. Damodiran*
20. Minor. Sakthi*

....Respondents / Defendants

(17th minor respondent is represented by his next friend 15th respondent and 19th and 20th minor respondents are represented by their guardian 18th respondent)

21. Venkatesan

...Respondent / Proposed Party

This interlocutory application came up before this Court on 27.07.2023 for final hearing in the presence of advocate Thiru. S. Moorthi, the learned counsel for the petitioners and advocate Thiru. K. Murugan, the learned counsel for the 3rd and 4th respondents and advocate Thiru. G. Vajjiraval, learned court guardian for the 17th, 19th

and 20th respondents, and R6 and R10 died, and 1st, 2nd, 5th to 16th and 18th respondents were called absent and set *ex parte* and upon hearing both sides and on perusal of records having stood over for consideration till date, this Court delivers the following:

ORDER

This application is filed under Order XXII Rule 9 of the Code of Civil Procedure, 1908 for setting aside the abatement of suit as against the 6th defendant.

The averments of the petitioners in brief:

1. The petitioners herein are the plaintiffs in the suit filed against respondents / defendants for declaration and perpetual injunction. The petitioners aver that during the pendency of the suit, the 6th defendant namely Kuppu died on 27.01.2019 and her husband namely Chinnasamy and her son Venkatesan alone are her legal heirs and her husband Chinnasamy predeceased the 6th defendant and her son Venkatesan being her sole legal heir has to be added as party to the suit. The petitioners aver that there has been a delay of 230 days in filing application to implead the said Venkatesan to the suit and the delay is neither willful nor wanton, and hence, the petitioners pray for allowing this application and to set aside the abatement of the suit as against the 6th defendant.

The averments of the 3rd and 4th respondent in brief:

2. The respondents aver that the averments of the petitioners are all false and aver that the petitioners have not furnished any reason of whatsoever nature for the delay and the application is liable to be dismissed.

The averments of the minor respondents 17, 19, 20 represented by the court guardian:

3. The application is founded on false averments and the application for impleading the legal heir of the 6th defendant is numbered as I.A.No. 206 of 2016 and

avers that there is no objection to pass any order that would not prejudice the minor respondents and seeks for dismissal of the application.

Non-appearance of the rest of the respondents:

4. The notices to the respondents 1, 2, 5 to 16 and 18 were dispensed with by this Court by order dated 11.02.2020 to avoid delay in proceedings as they remained *ex parte* through the suit proceedings.

5. The notice to the proposed party / 21st respondent was duly served and was called absent and set *ex parte* on 26.02.2021.

Point for consideration:

6. Whether this application is liable to be allowed?

Evidence:

7. Neither of the parties to this application has adduced any oral or documentary evidence.

Discussion:

8. This Court heard both sides and perused case records. The suit is instituted for reliefs of declaration of title of the petitioners and consequential perpetual injunction and mandatory injunction to remove encroachment in the suit property. It was averred that the 6th defendant died on 27.01.2019 and the same was not disputed by the 4th respondent and the relationship of the proposed party is also not disputed by the 4th respondent. The factum of death of the 6th defendant and relationship of the proposed party being not disputed by the contesting respondents who are relatives and the nature of the suit being for declaratory reliefs, this Court is of considered view that the legal representative of the deceased 6th defendant have to be impleaded as party to the suit to avoid multiplicity of proceedings. Though the petitioners have not assigned any satisfactory reasons for the delay, this Court is of view that rejecting this application would only result in further delay of the proceedings and cause greater

hardship to both the parties to the suit. I.A.No. 206 of 2016 is an application filed for temporary injunction and not as avoid by the minor respondents. The proposed party remained absent and there is no dispute with regard to death of the 6th defendant and her relationship with the proposed party. Hence, in order to avoid multiplicity and delay of proceedings, this Court is inclined to allow this application without any cost.

Result:

9. As a result, this application is allowed. In the interest of justice no cost. The abatement of the suit as against the 6th defendant is set aside.

This order was dictated to typist and transcribed by her in computer and after rectification of mistakes, pronounced by me in open court on this 17th day of August 2023.

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