

**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. 07 of 2022 in O.S.No. 66 of 2016

TNKI13-000798-2016

1. Govindhan
2. Ganesan (Died)
3. Subramani

....Petitioners / Plaintiffs

4. Amsa
5. Selvi
6. Vedi

....Petitioners / Proposed Parties

/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*
21. Venkatesan

....Respondents / Defendants

(17th, 19th and 20th minor respondents are represented by Court Guardian)

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, the learned Court Guardian for the 17th, 19th and 20th respondents, the 6th respondent died and the 1st, 2nd, 5th, 7th, 8th, 10th to 16th and 18th respondents were set *ex parte* for non-appearance and upon hearing both sides and on perusal of records having stood over for consideration till date, this Court delivers the following:

ORDER

The application has been filed under Order XXII Rule 9 of the Code of Civil Procedure, 1908 for setting aside the abatement as against the 2nd plaintiff.

The averments of the petitioner in brief:

1. The petitioners herein are the plaintiffs in the suit instituted for declaration and injunction and aver that the 2nd plaintiff died during the pendency of the suit on 30.05.2021 and the legal heirs are his wife Amsa, daughter Selvi, son Vedi. The petitioners aver that the applications to implead the legal heirs ought to have been filed within 150 days and there has been a delay of 240 days which is neither willful nor wanton and due to only the ill-health of the 1st petitioner. Hence, the petitioners pray for allowing this application and to set aside the abatement as against the 2nd plaintiff.

The averments of the 3rd & 4th respondents in brief:

2. The respondents deny the averments of the petitioners in toto and aver that this application has been filed by averring only false averments and this application is liable to be dismissed. The respondents aver that alleged false and imaginary

averments which are not supported with any evidence and seeks for dismissal of the application.

Dispensation of notice to certain respondents:

3. Notices to the respondents 1, 2, 5, 7, 8, 10 to 16, 18 were dispensed to avoid delay of the proceedings since they were set *ex parte* in the suit and remained absent through out the proceedings.

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. The Court heard both sides and perused case records. This application has been filed by the plaintiff to setting aside the abatement as against the deceased 2nd plaintiff. A perusal of the case records would show that the 2nd plaintiff has died on 30.05.2021 and the death was intimated to this Court on 24.06.2022 when the learned counsel for the plaintiff filed a memo. The reasons assigned by the petitioners are that the 1st petitioner was ill. The respondents have objected to this application that the averments are all false and have not raised any serious objection as to the death of the 2nd defendant or the legal heirship of the proposed parties. Hence, this Court is of considered view that the objections are only perfunctory in nature. Further owing to the extraordinary circumstances prevailing in the year 2021 due to the COVID-19, the explanation of illness is plausible and this Court is of considered view that the reasons for the delay are satisfactory. Hence, this court is inclined to allow this application.

Result:

7. As a result, this application is allowed. No cost. The abatement of the suit as against the 2nd plaintiff is set aside.

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 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