

**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 23rd day of November 2023

I.A.No. 09 of 2023 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 (Died)
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)

22. Veerapathiran
23. Kumar

...Respondents / Proposed Parties

This interlocutory application came up before this Court on 15.11.2023 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 and 10th respondents died and the 1st, 2nd, 5th to 16th and 18th respondents were set *ex parte* for non-appearance and the respondents 22, 23 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 against the 13th defendant.

The averments of the petitioner in brief:

1. The petitioners herein are the plaintiffs in the suit filed against the defendant for declaration and when the suit was pending, the 13th defendant namely Ramakkal died on 12.08.2022. The petitioners aver that the legal heirs of the 13th defendant was her husband namely Veerabathran and her son Kumar. The petitioners aver that the legal heirs ought to have been impleaded as parties, however, there has been a delay of 48 days and the delay is not will full and pray for along this application.

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

2. The 3rd & 4th respondents deny the averments of the petitioner in the application in toto and aver that this application has been filed based on false averments and seeks for dismissal of the application.

The non-appearance of the proposed parties:

3. The notice to the proposed parties were duly served and the proposed parties entered appearance on 29.09.2023 and sought time for engaging counsel. However, there was no appearance thereafter on 09.10.2023 and the proposed parties were

called absent and set *ex parte* on 09.10.2023. Notices to the respondents 1, 2, 5, 7, 8, 10, 11, 14 to 16 were dispensed to avoid delay of the proceedings since they were set *ex parte* in the suit and remained absent through out the proceedings.

The averments of the 17th, 19th, 20th respondents in brief:

4. The minor respondents 17, 19, 20 were represented by court guardian filed counter stating this application has been filed with false and frivolous allegations and that the minor respondents have no objection in impleading the legal heirs of the deceased defendant without any prejudice to the minors.

Point for consideration:

5. Whether this application is liable to be allowed?

Evidence:

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

Discussion:

7. This Court heard both sides and perusal case records. This suit has been instituted for declaration of title of the plaintiff and for mandatory injunction directing the 3rd and 4th defendants to remove encroachment and for recovery of possession. When the suit was pending the 13th defendant was reported to have died on 12.08.2022 by the process server of issuance of notice in I.A.No. 07 of 2022 and the notice to the 13th defendant was returned as died with the death certificate of 13th defendant and this application is filed for impleading legal heirs of the 13th defendant the the contesting defendant have not raised any issue with respect to the death of the 13th defendant or legal heir-ship pf the proposed parties. The proposed parties have also not appeared to contest or dispute the death of the 13th defendant or legal heir-ship. This suit has been filed for declaration of title, hence, it is a settled property of

law that all persons to have or claims to have right in respect of the suit property have to be impleaded as parties to the suit. Since, there was not objection raised with respect to the death of the 13th defendants and the legal heir-ship of the proposed parties, this court is inclined to allow this application.

Result:

8. As a result, this application is allowed. No cost. The abatement of the suit as against the 13th 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 23rd day of November 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