

I IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF, NAGERCOIL.

Present : Tmt. M.Alima, B.A., L.L.M.,

Principal District Munsif, Nagercoil.

Thursday, on the 14th day of November, 2024.

I.A. Nos. 10 of 2024 & 11 of 2024 in

O.S. No. 87 of 2016

1. Pancha Rethinam (Died)

Addl. 2. Sasi Kumar

Addl. 3. Ramesh Raja

Addl. 4. Bala Chandran

Addl. 5. Nishanthini

...Petitioners / Addl 2 to 5th
Plaintiffs/Legal heirs

-vs-

1. Manonmani

2. Vanaja

3. Ramya

4. Rahul

... Respondents / Defendants

These petitions came before this court on 07.11.2024 for a final hearing in the presence of Mr. B.D Goban, M. Bino Vins Kumar, learned Counsel for the petitioners and Mr. P. Asarutheen, learned counsel for the Respondents 1, 3, 4 and 2nd Respondent set ex parte in the suit and 1st petitioner died, and upon hearing both sides, perusing the case records, and having stood over for consideration till this day, this court hereby delivers the following:

COMMON ORDERI.A. No. 10 of 2024 prayer

The petitioners have filed the above petition under Order 1 Rule 10 and Section 151 of the Code of Civil Procedure, seeking to implead the legal heirs of deceased Plaintiff as additional defendants, 2nd to 5th Plaintiffs in the suit and thus render justice.

I.A. No. 11 of 2024 prayer

The petitioners have filed the above petition under Order 22 Rule 9(2) and Section 151 of the Code of Civil Procedure to pass an appropriate order to set aside the abatement caused in filing the impleading petition to the implead legal heirs of the deceased original plaintiff and thus render justice.

1) Gist of Averments in the Petitioners/Plaintiff's Petitions:

The Petitioner is the 1st Petitioner herein and the husband of the Plaintiff. The Petitioner's wife of Pancha Rethinam filed this suit for demarcation and permanent injunction and other reliefs. It is humbly submitted that the 1st petitioner's wife was expired during the pendency of this suit leaving behind 1st petitioner and his children. The 1st petitioner's wife the original plaintiff was died on 27.03.2024. The death certificate is annexed herewith. The legal heir of the deceased Pancha Rethinam namely, 1) Sasi Kumar (Husband). 2. Ramesh Raja (Son), 3) Bala Chandran (Son) and 4) Nishanthini (Daughter) have to be

impleaded for the proper and effective adjudication of this suit. But due to my illness and due to the mental agony caused because of 1st petitioner's wife's sudden death, 1st petitioner's could not able to appear before this court and to take steps to the file impleading petition. It is neither wilful nor wanton, it was occurred only due to 1st petitioner's illness. Hence, the 1st petitioner's unable to file the impleading petition within the stipulated time and the petition is abated on 27.05.2024. Hence, this court may be pleased to setaside the abatement in filing the impleading petition. If the petitioners are not impleaded as additional plaintiffs it will cause irreparable loss, damages and prejudice to us. Hence, these petitions are to be allowed.

2. Gist of Averments in the 1st Respondent had filed counter, and the same has been adopted by the 3 and 4 Respondents:

The 1st Respondent had filed a counter stating that is not maintainable either in law or on facts. The para 2 and 3 of the petition is to be proved by petition through documentary evidence. The reason stated in the affidavit by the petitioner for the delay is not acceptable. The petitioner has not produced any documents for his illness. The petitioner has filed this petition only to drag on the proceedings. The petitioner has no bonafide reason to file this petition. The petitioner has filed this petition only to harass these respondents. Hence, the respondents prayed to accept this counter and to dismiss the petition.

3) The point for consideration is whether the above petitions have to be allowed or not.

4) Point:

5) Heard both sides. Records perused. On perusal of records, the 1st petitioner's wife's filed the above suit against the defendants for demarcation and permanent injunction. The counsel for the petitioners argued that due to my illness and due to the mental agony caused because of 1st petitioner's wife's sudden death, 1st petitioner's could not able to appear before this court and to take steps to the file impleading petition. It is neither willful nor wanton; it was occurred only due to 1st petitioner's illness. Hence, the 1st petitioner's unable to file the impleading petition within the stipulated time, and the petition is abated on 27.05.2024.

6) No oral or documentary certificate has been filed by the petitioners in this court to prove the above reason. Therefore, the plea raised by the petitioners in these petitions is not acceptable to this Court.

7) However, the 1, 3, 4th respondents did not deny the legal heirs of the deceased Plaintiff. The above suit was filed for demarcation and permanent injunction against the Respondents/Defendants. In these circumstances, in order to continue the suit, one more opportunity is necessary for the petitioners to proceed with the above case. Moreover, the counsel for the petitioners argued

that the petitioners have a good case on the merits. Hence, to avoid multiplicity of proceedings and to provide one more opportunity to the petitioners to continue the suit and for proper adjudication in the interest of justice, this court is inclined to allow these petitions. Hence, these petitions are allowed.

8) As a result,

I.A. No. 10 of 2024:

This petition is allowed, on the condition that the Addl. 2 to 5 Petitioners shall pay a sum of Rs.200 /- (Rupees Two hundred only) payable to the Respondents 1, 3, and 4 on or before 20.11.2024. otherwise, this petition would be dismissed. Call on 20.11.2024.

I.A. No. 11 of 2024:

This petition is allowed, on the condition that the Addl. 2 to 5 Petitioners shall pay a sum of Rs.200 /- (Rupees Two hundred only) payable to the Respondents 1, 3 and 4 on or before 20.11.2024. otherwise, this petition would be dismissed. Call on 20.11.2024.

Dictated to the Steno-Typist, and typed by her directly in the Computer, corrected and pronounced by me, in open court this, the 14th day of November 2024.

sd/-
Principal District Munsif,
Nagercoil.

Petitioner side witnesses and documents : Nil.

Respondents side witnesses and documents : Nil.

sd/-

Principal District Munsif,

Nagercoil.

Draft/Fair Order
I.A.No. 10/2024 and
I.A.No.11 of 2024 in
O.S.No.87/2016
Date: 14.11.2024

