

**IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF,
NAGERCOIL**

Present: **Thiru. R.Sundara Kamesh Marthandan, M.L.,**
Principal District Munsif, (FAC) Nagercoil.

Tuesday, on this the 2nd day of July 2024

I.A. No. 3 of 2022, 4 of 2024 & 5 of 2024

in

O.S. No. 93 of 2019

Kasthuri

... Petitioner/Plaintiff

-vs-

1. P.Ponnammal (Died)

2. P.Pakiyamuthu

3. P.Santham

4. P.Samraj

... Respondents/Defendants

These Petitions came up before me on 02.07.2024 for final hearing in the presence of Mr. R.Rathakrishnan, Advocate for the Petitioner/Plaintiff and Mr. D.Arul Maran Advocate for the Respondents and upon perusing the case records and this Court hereby delivers the following:

COMMON ORDER

1. The Petitioner had filed I.A.No. 3 of 2022 under Order XXII Rule 4 and Section 151 CPC seeking an order to implead the legal heirs of the deceased Defendant as additional Defendants 2, 3 and 4 in the suit.

The Petitioner had filed I.A.No. 4 of 2024 under Section 5 of the Limitation Act and Section 151 CPC seeking an order to condone the delay of

238 days in filing the Petition to set aside the abatement.

The Petitioner had filed I.A.No. 5 of 2024 under Order XXII Rule 9(2) and Section 151 CPC seeking an order to set aside the abatement caused on the death of the Defendant.

2. The Petitioner had stated that the Defendant died on 01.11.2021 leaving the Respondents 2 to 4 as his legal heirs. Since the suit has been filed for permanent injunction, the legal heirs of the deceased Defendant have to be impleaded, failing which the suit will suffer for non-joinder of necessary parties. Hence the above petition in I.A. No. 3 of 2022.

3. In the Counter filed in I.A. No. 3 of 2022, the Respondents 2 to 4 have contented that the Defendant died on 01.11.2021. As both the Plaintiff and Defendant hail from Kulathoor Colony, Vadiveeswaram Village, on the very date of the death, the Petitioner is aware of the death of Defendant. The Petitioner's claim that she came to know about the death of the Defendant in pursuant to the memo dated 17.03.2022 is false. In spite of opportunity granted to the Petitioner, by this Court, the Petitioner had not filed petition within stipulated time and filed the Petition in I.A. No. 3 of 2022 only on 21.09.2022. As per Article 120 of the Limitation Act, the suit was abated on the 90th day of the death of a party to the suit. The application to set aside abatement has to be filed within 60 days from the date of abatement as per the Article 121 of the Limitation Act. As such the I.A.No. 3 of 2022 simplicitor seeking to implead the legal heirs of the Defendant, ought not to have numbered. Hence the Respondents prayed for

dismissal of the above petition.

4. Subsequent to filing of counter by the Respondents in I.A.No. 3 of 2022 the Petitioner came up with I.A.No. 4 of 2024 and I.A.No. 5 of 2024 seeking an order to condone the delay of 238 days in filing Petition to set aside the abatement under Section 5 of the Limitation Act and to set aside the abatement under Order XXII Rule 9(2) and Section 151 CPC respectively. The Petitioner had averred the same facts in the affidavits filed in support of the above I.A.Nos. 4 of 2024 and 5 of 2024. Since the Respondents have not filed counter in I.A.Nos. 4 of 2024 and 5 of 2024, they were set exparte.

5. The Point for Consideration is whether the above petitions have to be allowed or not?

6. On perusal of the Plaint, the Petitioner/Plaintiff had filed the above suit seeking permanent injunction, in respect of the Plaint schedule property i.e. an immovable property. The Petitioner's claim as to the death of the original Defendant on 01.11.2021 and as to the fact that the proposed Respondents are the legal representatives of the deceased Defendant is not disputed by the Respondents. The Respondents objection is with regard to the delay in filing the Petition, as because the Plaintiff was aware of the Defendant's death on the very date of death.

7. In order to over come the said objections raised in the counter filed in I.A.No. 3 of 2022, the Petitions in I.A.No. 4 of 2024 and I.A.No. 5 of 2024 has been filed. In such circumstances since right to sue survives and considering the

reasons stated in the affidavit filed in support of the above Petition, this Court is of the considered view that the above petitions could be allowed on terms.

In the result, I.A.No. 3 of 2022 is allowed on condition the Petitioner pays a sum of Rs. 250/- (Rupees Two Hundred and Fifty only) to the Respondents 2 to 4 on or before 29.07.2024. Call on 30.07.2024.

In the result, I.A.No. 4 of 2024 is allowed on condition the Petitioner pays a sum of Rs. 500/- (Rupees Five Hundred only) to the Respondents 2 to 4 on or before 29.07.2024. Call on 30.07.2024.

In the result, I.A.No. 5 of 2024 is allowed on condition the Petitioner pays a sum of Rs. 250/- (Rupees Two Hundred and Fifty only) to the Respondents 2 to 4 on or before 29.07.2024. Call on 30.07.2024.

Dictated to the Steno typist, transcribed and typed by her, in Computer corrected and pronounced by me in Open Court this, the 2nd day of July, 2024.

Sd/-

Principal District Munsif,(FAC)
Nagercoil.

Petitioner side witnesses and documents:- Nil

Respondents side witnesses and documents :- Nil

Sd/-

Principal District Munsif,(FAC)
Nagercoil.

Common Fair/ Draft Order
I.A.No. 3 of 2022,
I.A.No.4 of 2024 &
I.A.No. 5 of 2024 in
O.S. No.93 of 2019
Date: 02.07.2024.
PDM Court, Nagercoil.