

In the Court of the II Additional District Munsif, Nagercoil

Present: Thiru.R.Sundara Kamesh Marthandan, M.L.,
II Additional District Munsif, Nagercoil.

Friday, on this 7th day of July 2023

I.A. No.6 of 2022, I.A.No. 7 of 2022 & I.A. No. 8 of 2022

in

Original Suit No. 133 of 2019
CNR No.TNKK04-000200-2019

1. Ponnuswamy(Died)
2. Rajadurai
- 3.Selvaraj
4. Muthammal
- 5.Thankasivan
- 6.Sreedharan
- 7.Gangawathy
- 8.Thamizharasi
- 9.Addl.Paneer Selvam
- 10.Addl.Thanga Pathma
- 11.Addl.Thanga Kumar
- 12.Addl.Thanga Jothi
- 13.Addl.Thanganathan
- 14.Addl.Thangakani
- 15.Addl.Thanga Mathavi
- 16.Addl.Thangalalitha

.. Petitioners/Plaintiffs

-VS-

1. Balan
2. Muniyaswamy
3. Maheswari
- 4.Athithan
- 5.Periaswamy
- 6.Ananthammai
- 7.Indira
- 8.Athiappan
9. Arul Anand
10. Rajkumar

.. Respondents/Defendants

These Petitions came up before this Court on 23.06.2023, in the presence of Thiru. R. Ravindran Advocate for the Petitioner and Thiru. C. Ashok Kumar Advocate for the Respondents 2 to 8 and 1st Respondent set exparte, upon hearing both sides arguments and upon perusing the case records and having stood over for consideration till this day, this Court delivers the following:

COMMON ORDER

1. The Petitioners have filed the above Petitions i.e., I.A.No.6 of 2022 under Order I Rule 10(2), seeking an order to implead the legal representatives of the 1st Plaintiff as additional Plaintiffs and filed I.A. No. 7 of 2022 under Section 5 Limitation Act, seeking to condone the delay of 329 days to implead the legal representatives of the 1st Plaintiff as additional Plaintiffs in the suit and filed I.A. No. 8 of 2022, under Order XXII Rule 9, seeking an order to setaside the abatement caused on the demise of the 1st Plaintiff.

2. In the affidavit filed in support of the above Petitions, the defendants have stated that the deponent is the 2nd Petitioner and he files the affidavit for himself and on behalf of the 1st Petitioner and Petitioners 3 to 8. The Original Plaintiff had filed the above suit for bare Injunction. When the Petitioner prepared, the proof affidavit, he came to know that the 1st Plaintiff, his elder brother had died and intimation was not given to the Court and the legal heirs of the 1st Plaintiff was not impleaded.

3. Further the 1st Plaintiff died on 27.11.2021, leaving his wife and seven children as legal heirs. They have to be impleaded as additional Plaintiffs, as they

are necessary parties for the disposal of the above suit. The legal representatives were living in different places and they were not aware of the case and they have to be impleaded as Plaintiffs, in the above suit. The delay of 329 days in filing the impleading Petition, the same has to be condoned and the abatement has to be set aside and the legal representative of the deceased 1st Plaintiff has to be brought on record. Hence the above three Petitions.

4. The 8th respondent had filed counter and the respondents 2 to 7 & 9 & 10 have adopted the 8th respondent's counter.

5. In the counter, the 8th respondent had stated that the above Petitions are not maintainable and that the respondents are in peaceful enjoyment over the temple. While so, the Petitioner with malafide intention to disturb the respondent's peaceful enjoyment over the temple, has filed the above Petition. The Petitioner had not produced any documentary evidence, to prove the contentions. The Petitioner had filed the above Petition after several years in order to drag on the proceedings. The Petitions are devoid of merits and the same is liable to be dismissed.

6. The point for consideration is whether the above Petitions could be allowed or not?

7. The Petitioner had stated that the 1st Plaintiff had died leaving the proposed Plaintiffs as legal representatives. The 1st Plaintiff along with the other Plaintiff had filed the above suit for Injunction. Though the respondents filed counter stating that the above Petitions were filed, in order to protract the suit, the

respondents have not denied the factum as to the death of the 1st Plaintiff and as to the averment that the proposed Plaintiffs are the legal representatives of the deceased 1st Plaintiff. Since right to survives and it is stated that the legal representatives of the 1st Plaintiff are necessary parties to the above suit, this Court is of the considered view, that the above Petitions could be allowed on terms.

In the result,

I.A. No. 6 of 2022 is allowed. On condition the Petitioners pays a sum of Rs.500/- (Rupees Five Hundred Only) to the Respondents on or before 20.07.2023 call on 21.07.2023.

I.A. No. 7 of 2022 is allowed. On condition the Petitioner pays a sum of Rs.500/- (Rupees Five Hundred Only) to the Respondents on or before 20.07.2023 call on 21.07.2023.

I.A. No. 8 of 2022 is allowed. On condition the Petitioner pays a sum of Rs.500/- (Rupees Five Hundred Only) to the Respondents on or before 20.07.2023 call on 21.07.2023.

Total Cost Rs. 1500/- (Rupees One Thousand and Five Hundred Only).

This Common Order is dictated to the steno-typist directly, typed by her computer, corrected and pronounced by me in Open Court, this the 7th day of July 2023.

II Additional District Munsif
Nagercoil.

Petitioner side witness and documents :- Nil.

Respondents side witness and documents :- Nil.

II Additional District Munsif,
Nagercoil.

II ADM Court, Nagercoil.
I.A. No. 6,7 of 2022 & I.A.
No. 8 of 2022 in
O.S. No. 133 of 2019
Common Fair Order
Dated: 07.07.2023