

**IN THE COURT OF THE II ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL.**

**Present: Tmt. M.Alima, B.A., L.L.M.,
II Additional District Munsif, Nagercoil(FAC)**

Tuesday, on this the 25th day of February, 2025

I.A. Nos. 6 of 2024 & 7 of 2024 & 8 of 2024

**in
O.S. No. 136 of 2020**

1.Kamalam (Died)

Addl. 2. Jeya

Addl. 3. Surendran

Addl. 4. Chithra

... Petitioners/Proposed

Additional plaintiffs 2 to 4

-vs-

Balakrishnan

... Respondent / Defendant

These Petitions came up before me on 24.02.2025 for final hearing in the presence of Thiru. A. Vimalan Advocates for the Petitioners/Proposed Additional 2 to 4 Plaintiffs and Thiru. K. Sahayadhas Advocate for the Respondent/Defendant and upon hearing both sides and upon perusing the case records and having stood over for consideration, till this day, this Court delivers the following:-

COMMON ORDER

Prayer in I.A. No. 6 of 2024:

The petitioners have filed the above petition under Section 5 of the Indian Limitation Act, seeking to condone the delay of 430 days in filing application to implead the legal heirs of deceased plaintiff in the above suit.

Prayer in I.A. No. 7 of 2024:

The petitioners have filed the above petition Under Order XXII Rule 9 and Section 151 of the Code of Civil Procedure, seeking to set aside the abatement passed in filing application in impleading the legal heirs of the deceased plaintiff in the above suit.

Prayer in I.A. No. 8 of 2024:

The petitioners have filed the above petition Under Order XXII Rule 3 and Section 151 of the Code of Civil Procedure, seeking to implead the legal heirs of deceased plaintiff as Additional 2 to 4 Plaintiffs in the suit and thus render justice.

2) **Gist of Averments in the Petitioners / Plaintiffs Petitions :**

The petitioner is the power agent of the additional 2 to 4 plaintiffs considered in this suit. The petitioner is well aware of the case details; the original plaintiff has filed the suit against the defendant seeking a permanent injunction and other reliefs. The original plaintiff is the aunt of the petitioner,

and she passed away on 08.11.2022 due to age-related health complications. Therefore, it is essential to implead her legal heirs as an additional 2 to 4 plaintiffs of the original suit. Otherwise, the petitioners will suffer irreparable loss and hardship. Though petitioners 2 to 4 had executed a power of attorney in favour of the petitioner about 10-11 months ago, due to the petitioner's work commitments and circumstances requiring a stay outstation for his daughter's education, the petition for impleading legal heirs in the original suit could not be filed until now. Therefore, there has been a delay of 430 days in filing this petition, and this delay was not intentional. If the aforesaid delay is not condoned, the petitioners alleged additional 2 to 4 plaintiffs will be put to irreparable loss, and that cannot be compensated by any means. Hence, these petitions are to be allowed.

3) Gist of Averments in the Respondent/Defendant Counters:

The respondent/plaintiff had filed a counter stating that the petition is not maintainable either in law or on facts. The petitioners have no manner of right over the scheduled property, and as such, the legal heirs of the deceased plaintiff are unwarranted to prosecute the suit as alleged by the plaintiff. As the proposed parties have no right over the scheduled property, the alleged power deed executed by them in favour of the petitioner is invalid. Hence, the petitioner is not a competent person to prosecute the case on behalf of the proposed parties, the legal heirs of the deceased plaintiff. The averment that since the petitioner

was stayed out of his native place, he was unable to implead the proposed parties in time is invented and introduced by the petitioner to escape from the clutches of Law of Limitation. Hence, the petition is not maintainable under law as well as on facts . The suit is abated due to the non-filing of present petition in time. The non-filing of the present petition by the petitioner is wilful and wanton. The reason assigned by the petitioner for the delay is false and frivolous. Further the petitioner has not properly explained each and every delay in filing the present petition. Hence, the petitioner is not entitled for any order or relief from this court in the present petition. No irreparable loss or injury would be caused to the petitioner, if the petition is not allowed. The petition is most frivolous and vexatious one. The petition is highly belated. The petitioner, with a view to drag on the proceedings, has filed the present petition. The petitioner has not approached this court with clean hands. Hence, the respondent prayed to accept this counter and to dismissed these petitions.

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

5) Point:

6) Heard both sides. Records perused. On perusal of records, the original plaintiff had filed the above suit against the respondent/defendant for permanent injunction and other reliefs.

7) These petitions are only to implead the legal heirs of the original plaintiff who died on 08.11.2022. Therefore, it is essential to implead her legal heirs as an additional 2 to 4 plaintiffs of the original suit. Otherwise, the petitioners will suffer irreparable loss and hardship. Though petitioners 2 to 4 had executed a power of attorney in favour of the petitioner about 10-11 months ago, due to the petitioner's work commitments and circumstances requiring a stay outstation for his daughter's education, the petition for impleading legal heirs in the original suit could not be filed until now.

8) The Respondent/defendant objected that the petitioners have no manner of right over the scheduled property, and as such the legal heirs of the deceased plaintiff are unwarranted to prosecute the suit as alleged by the plaintiff. As the proposed parties have no right over the scheduled property, the alleged power deed executed by them in favour of the petitioner is invalid. Hence, the petitioner is not a competent person to prosecute the case on behalf of the proposed parties, the legal heirs of the deceased plaintiff. The suit is abated due to the non-filing of these petitions in time.

9) On considering the above it is observed by this court that the petitioner has not filed any single paper to support his contention and this court is not satisfied with the reason stated by Petitioner. It is formal reason and this court is not accepted the same. Moreover the Respondents

have strongly contested in allowing these petitions. Even though this court is not satisfied in the reason stated by this Petitioner, this court would like to allow this petition under the principle of natural justice.

10) Moreover, the respondent did not deny the legal heirs of the deceased original plaintiff. The above suit was filed for an injunction against the respondents. In these circumstances, this court has concluded that, in order to come to a proper conclusion regarding the suit issue, the legal heirs of the deceased original plaintiff are necessary parties. Moreover, if these petitions are allowed, no prejudice will be caused to the respondent. Hence, to avoid multiplicity of proceedings and for proper adjudication of the suit in the interest of justice, this court is inclined to allow these petitions on conditional cost.

11) As a result,

I.A. No. 6 of 2024

This petition is allowed, on the condition that the petitioners shall pay a sum of Rs.500/- (Rupees Five Hundred only) to the Respondent / Defendant on or before 05.03.2025, otherwise, this petition would be dismissed. Call on 05.03.2025.

I.A. No. 7 of 2024

This petition is allowed, on the condition that the petitioners shall pay a sum of Rs.500/- (Rupees Five Hundred only) to the Respondent / Defendant on

or before 05.03.2025, otherwise, this petition would be dismissed. Call on 05.03.2025.

I.A. No. 8 of 2024

This petition is allowed, on the condition that the petitioners shall pay a sum of Rs.500/- (Rupees Five Hundred only) to the Respondent / Defendant on or before 05.03.2025, otherwise, this petition would be dismissed. Call on 05.03.2025.

Dictated to the Steno-Typist directly, transcribed and typed by her in computer, corrected and pronounced by me in Open Court, this the 25th day of February, 2025.

II Additional District Munsif
Nagercoil.

Petitioners side witness & Documents : Nil

Respondent side witness & Documents : Nil

II Additional District Munsif
Nagercoil.

I.A. Nos. 6, 7, 8 of 2024
in
O.S. No.136 of 2020
Fair Order
Date: 25.02.2025.
II ADM Court, Nagercoil.

