

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

Present : Selvi. V. Sivaranjani, B.A., L.L.B.,

II Additional District Munsif, Nagercoil

Monday, on the 9th day of February, 2026

I.A. No.3 of 2025 & I.A.No.4 of 2025 &

I.A. No.5 of 2025 in

O.S. No.116 of 2018

CNR No.TNKK04-000207-2018

Paulswamy

... Petitioner/Plaintiff

-VS-

1. Eswara Vadivoo (died)

2. Mohan

Addl. 3. Murugan

Addl. 4. Ananth

... Respondents/Defendants

These Petitions came up before me on 02.02.2026 for final hearing in the presence of Thiru. R. Thenkarai Maharajan, Advocate for the Petitioner / Plaintiff and Thiru. A Balamurugan, Advocate for the 2nd Respondent and 3rd and 4th Respondents, called absent, set exparte and 1st Respondent is died 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.3 of 2025:**

The petitioner has filed the above petition Under section 5 of the Limitation Act, seeking to condone the delay of 654 days in filing the impleading application for legal heirs of deceased 1st defendant.

Prayer in I.A. No. 4 of 2025:

The petitioner has filed the above petition Under Order XXII Rule 9 and Section 151 of the Code of Civil Procedure, to set aside the abatement of the suit to implead the legal heirs of deceased 1st defendant as additional defendants 3 and 4.

Prayer in I.A. No.5 of 2025:

The petitioner has filed the above petition Under Order XXII Rule 4 and Section 151 of the CPC, seeking to implead the legal heirs of deceased 1st defendant as additional defendants 3 and 4 in the above suit.

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

The petitioner is the plaintiff in the above suit petitioner have filed this suit seeking a Permanent injunction against the defendants. While the above suit was pending for trial, the 1st defendant was residing at his son's house outside the town, and therefore his whereabouts were not known. The 2nd defendant has now been informed that the 1st defendant passed away on 05.08.2023. Hence, it has become necessary to implead the legal heirs of the 1st

defendant as additional 3rd and 4th defendants in this suit.

3. Therefore, petitioner prayed that this court to condone the delay of 654 days, set aside the abatement and permit the legal heirs of the 1st defendant to be impleaded as additional 3rd and 4th defendants. Hence, these petitions are to be allowed.

4) **Gist of Averments in the 2nd Respondent's Counters:**

The 2nd Respondent filed an adoption memo stating that he has filed counter in I.A.No.3/2025 and prays the same may be treated as a counter in I.A.4/2025 and I.A.5/2025.

5. The 2nd respondent has filed counter stating that the petition is not maintainable in law of facts and circumstances of the case. There is no proper reason mentioned in the affidavit. There is no specific reason mentioned in the affidavit for the delay caused by the petitioner / Plaintiff. In the affidavit the petitioner states that he have got knowledge about the death of the 1st defendant only after the 2nd defendant intimate the same on 15.07.2024.

6. But even after the knowledge the petitioner filed this petition only after 30 hearings of this case with intention to drag on the proceedings. After several years this petitioner filed this petition without any valid reason. Hence

this petition is not maintainable in facts. The delay petition filed by this petitioner only to drag on the proceedings to conduct the case. The petition is filed by this petitioner in a belated stage. The petition filed this vexatious petition only to harass this respondent. Hence these petition is liable to be dismissed. Hence, to accept the counters and dismissed the petitions.

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

8) Point:

Heard both sides. Records perused. The petitioner is the plaintiff in the suit filed for permanent injunction. The petitioner submitted that while the above suit was pending for trial, since the 1st defendant was residing at his son's house outside the town, his whereabouts were not known. The 2nd defendant has now been informed that the 1st defendant passed away on 05.08.2023 and thus necessary to implead legal heirs of the 1st defendant.

9. For that, the respondent has raised their contention succinctly that the petitioner claims to have known about the death of the 1st defendant on intimation by the 2nd defendant, that is on 15.07.2024 but there specified no reason for the delay caused to file this petition after nearly 30 hearings. Such a delay petition is only to drag on the proceedings

10. On perusal of notes paper, this court could ensure that on 15.07.2024 itself, 2nd defendant has filed memo stating 1st defendant has died. Subsequently, the petitioner filed petition in the next hearing itself but the same was returned by this court. After that, the plaintiff failed to proceed with filing the petition for several hearings and it could be seen in the meanwhile, the parties were engaged in the compromise talks. Initial steps taken by the plaintiff and the subsequent attempt to arrive at amicable settlement shows that the petitioner intention is not likely to drag on proceedings. Considering that and the suit is one for permanent injunction against defendants 1, 2 and their mens restraining from damaging the eastern wall of the plaintiff's property and an adjacent 3 feet space of land thereby disturbing the plaintiff's possession, this court is of the view that the cause of action survives against the legal representatives of the deceased 1st defendant since the suit is for permanent injunction relating to immovable property. Therefore, this court is of the considered view that the delay should be condoned, abatement to be set aside in order to implead the legal heirs of the deceased 1st defendant. In the light of above facts, this court is inclined to allow these petitions on conditional cost.

As a result,

I.A. No. 3 of 2025

This petition is allowed, on the condition that the petitioner shall pay a sum of Rs.500/- (Rupees Five Hundred only) payable to the Mediation and Conciliation Centre, Kanniyakumari at Nagercoil on or before 13.02.2026. otherwise, this petition would be dismissed. Call on 13.02.2026.

I.A. No.4 of 2025

This petition is allowed, on the condition that the petitioner shall pay a sum of Rs.500/- (Rupees Five Hundred only) payable to the Mediation and Conciliation Centre, Kanniyakumari at Nagercoil on or before 13.02.2026. otherwise, this petition would be dismissed. Call on 13.02.2026.

I.A. No. 5 of 2025

This petition is allowed, on the condition that the petitioner shall pay a sum of Rs.500/- (Rupees Five Hundred only) payable to the Mediation and Conciliation Centre, Kanniyakumari at Nagercoil on or before 13.02.2026. otherwise, this petition would be dismissed. Call on 13.02.2026.

Dictated to the Steno-Typist directly, transcribed and typed by her in computer, corrected and pronounced by me in Open Court, this the 9th day of February, 2026.

II Additional District Munsif
Nagercoil.

Petitioner side witness & Documents : Nil

Respondents side witness & Documents : Nil

II Additional District Munsif
Nagercoil.

I.A. Nos.3, 4 and I.A.No.
5 of 2025 in
O.S. No.116 of 2018
Fair Order
Date: 09.02.2026.
II ADM Court, Nagercoil.