

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

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

II Additional District Munsif, Nagercoil

Saturday, on the 8th day of November, 2025

I.A. No. 14 of 2025 & I.A.No.15 of 2025 &

I.A. No. 16 of 2025 in I.A.No.13 of 2024 in

O.S. No.622 of 2010

CNR No.TNKK04-000258-2010

Boopathi

... Petitioner/Plaintiff

-vs-

1. Johnson
2. Arthar Rathinakumar (died)
(Amended as per order in I.A.No.12 of 2024
dated 06.09.2024)
3. Melsy Simon
4. Kala
5. Soni
6. Menaka
7. Monisha
8. C. Raja

(Defendants 4 to 8 are legal heirs of deceased
2nd defendant impleaded as per order in
in I.A.No.9 of 2021 dated 06.07.2024 and
plaint amended as per order in I.A.No.12 of 2024
dated 06.09.2024)

... Respondents/Defendants/
Proposed 9 to 11
defendants

These Petitions came up before me on 06.11.2025 for final hearing in the presence of Thiru. G. Sivaraja Boopathy, Advocate for the Petitioner /Plaintiff and Thiru. M. Parameswaran, Advocate for the 1st Respondent, and 3rd to 8th and proposed 9th to 11th Respondents were set exparte in the suit and 2nd 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. 14 of 2025:

The petitioner has filed the above petition under Order 1 Rule 10(2) and Section 151 of the Code of Civil Procedure, seeking to pass an order to implead the proposed parties 9th, 10th and 11th Respondents/defendants in the original suit.

Prayer in I.A. No. 15 of 2025:

The petitioner has filed the above petition Under Order XXII Rule 9 and Section 151 of the Code of Civil Procedure, seeking to pass an order set aside the abatement .

Prayer in I.A. No. 16 of 2025 in I.A.No.13 of 2024:

The petitioners have filed the above petition Order 1 Rule 10(2) and Section 151 of the Code of Civil Procedure, seeking to implead the proposed parties 9th, 10th and 11th Respondents/defendants in the I.A.No.13 of 2024.

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

The Petitioner herein is the plaintiff in the original suit and was well acquainted with the fact of the case. The petitioner purchased the schedule property from the 3rd defendant. That while purchasing the scheduled property, the physical features of the schedule property has been pointed out by the Seller/3rd defendant, but the schedule property was not fixed with metes any bounds as the schedule property and the 1st and 2nd defendant's respective properties are also lying within the total area belong to the 3rd defendant.

3. In this juncture petitioner have filed the above original suit for seeking for permanent injunction restraining the 1st and 2nd defendants and demarcation of boundary for fixing metes and bounds over the scheduled property. Moreover, petitioner had filed an application to amend the prayer of the original suit and the petition has numbered as I.A.No.13 of 2024 and the notice has sent, subsequently the 3rd respondent/3rd defendant's court and postal notice was returned as died. The petitioner have no knowledge about the date of death of the 3rd respondent/3rd defendant.

4. The petitioner submit that the proposed 9th to 11th defendants are the legal heirs of the deceased 3rd defendants in the original suit. The petitioner submit that without adding the legal heirs of the 3rd defendants and the suit cannot arrive any fair conclusion. The proposed 9th to 11th defendants are very much necessary to adjudicated the issue involved in the above original suit.

The proposed parties have to be impleaded as 9th to 11th defendants in the above original suit and in the above I.A.No.13 of 2024, otherwise, there will be irreparable loss to petitioner. There may not any prejudice cause to the respondents/defendants.

5. The suit was filed seeking a declaration that the schedule property belongs to petitioner, along with other consequential reliefs. In this situation, petitioner filed a petition in I.A.No. 13 of 2024 seeking permission to carry out certain amendments in the plaint of the original suit. The said petition was taken on file, and summons were issued to the respondents.

6. Meanwhile, the summons issued to the 3rd defendant was returned with an endorsement stating that the 3rd defendant had expired. The petitioner was unable to ascertain the exact date of death of the 3rd defendant. Consequently, through petitioner's counsel, petitioner filed a memo before this court on 03.06.2025 requesting the 1st defendant to inform the court of the date of death of the 3rd defendant. However, the 1st defendant also informed the court that he did not know the date of death of the 3rd defendant.

7. The petitioner came to know about the death of the 3rd defendant only through the court's order dated 09.01.2025. Subsequently, to implead the legal heirs of the deceased 3rd defendant, petitioner filed a petition on 28.04.2025. Since, petitioner was unaware of the date of death of the 3rd defendant, and as petitioner came to know of the said fact only on 09.01.2025.

Petitioner was unable to file the petition to implead his legal heirs within the prescribed time. Due to the failure to file the petition within the stipulated time, all proceedings as against the 3rd defendant stood abated on 09.04.2025.

8. Since, all proceedings relating to the 3rd defendant have abated, it has become necessary to set aside the abatement. If the abatement of the proceedings concerning the 3rd defendant is not set aside, petitioner will suffer great hardship. As the proceedings against the 3rd defendant have abated, petitioner was unable to implead his legal heirs. Without impleading the legal heirs of the 3rd defendant, petitioner will be able to prove petitioner's case before this court. Hence, it is just and necessary that the abatement of the proceedings relating to the 3rd defendant be set aside. Otherwise, petitioner will be irreparable one. Hence, these petitions are to be allowed.

9) **Gist of Averments in the 1st Respondent's Counter:**

The 1st Respondent filed an adoption memo stating that he has filed counter in I.A.No.17/2025 and prays the same may be treated as a counter in I.A.14 of 2025, I.A.No.15 of 2025 and I.A.No.16 of 2025 in I.A.No.13 of 2024.

The 1st Respondent has filed counter stated in the petitioner's affidavit are hereby denied as false, except those that are specifically admitted hereunder otherwise dealt with. The petitioner did not say proper reasons for filing this petition in the very delayed stage. The petitioner has been seeking false claim through the I.A.No.13 of 2024 petition without having any right. There is no

such a type of the alleged property available as per lie. The petitioner has been creating false contentions through the I.A.No.13 of 2024 petition.

10. The petitioner has regularly been attending the court and has very well known about the death of the 2nd and 3rd defendants. The plaintiff has permanently been residing at Mylaudy Village in Kanyakumari District and residing very near to the house of the 2nd and 3rd defendants. The petitioner did not take proper steps to collect the legal heirs and their address and other particulars in the earlier occasion. The petitioner has stated wrong reasons connected with the collection of the particulars about the legal heirs of defendants 3 and 4. No cause of action arose to the petitioner to file this petition against the 1st defendant. The petition is liable for dismissal in the preliminary stage itself, because there are no bonafides in it. Hence, this petition is liable to be dismissed with cost.

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

12) Point:

Heard both sides. Records perused. On perusal of records, the petitioner/plaintiff came to know about the death of the 3rd defendant only through the court's order dated 09.01.2025. Subsequently, to implead the legal heirs of the deceased 3rd defendant, petitioner filed a petition on 28.04.2025.

Since, petitioner was unaware of the date of death of the 3rd defendant, and as petitioner came to know of the said fact only on 09.01.2025. Petitioner was unable to file the petition to implead his legal heirs within the prescribed time. Due to the failure to file the petition within the stipulated time, all proceedings as against the 3rd defendant stood abated on 09.04.2025.

13. Since, all proceedings relating to the 3rd defendant have abated, it has become necessary to set aside the abatement. As the proceedings against the 3rd defendant have abated, petitioner was unable to implead his legal heirs. Without impleading the legal heirs of the 3rd defendant, petitioner will be able to prove petitioner's case before this court.

14) In these circumstances, this court has concluded that, in order to come to a proper conclusion regarding the suit issue, proposed parties of the 9th to 11th are necessary parties if impleaded would be proper to conduct the suit, Moreover, if these petitions are allowed, no prejudice will be caused to the respondents. Hence, to avoid multiplicity of proceedings and for proper adjudication of the suit in the interest of justice, this court is inclined to set aside the abatement and allow these petitions in order to implead the legal heirs of the 3rd respondent / 3rd defendant. In the light of above facts and discussion this court is inclined to allow these petitions on conditional costs.

As a result,

I.A. No. 14 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 13.11.2025. otherwise, this petition would be dismissed. Call on 13.11.2025.

I.A. No. 15 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 13.11.2025. otherwise, this petition would be dismissed. Call on 13.11.2025.

I.A. No. 16 of 2025 in I.A.No.13 of 2024

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 13.11.2025. otherwise, this petition would be dismissed. Call on 13.11.2025.

Dictated to the Steno-Typist directly, transcribed and typed by her in computer, corrected and pronounced by me in Open Court, this the 08th day of November, 2025.

II Additional District Munsif
Nagercoil.

Petitioner side witness & Documents : Nil

Respondents side witness & Documents : Nil

II Additional District Munsif
Nagercoil.

I.A. Nos.14, 15 and I.A.No.
16 of 2025 in I.A.No.13 of 2024
in
O.S. No.622 of 2010
Fair Order
Date: 08.11.2025.
II ADM Court, Nagercoil.