

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

Present: **Tmt.M.Alima,B.A.,L.L.M.,**
I Additional District Munsif, Nagercoil.

Monday, on this the 22nd day of April, 2024.

E.A. No.3 of 2021

in

E.P.No.19 of 2019

Devasundaram

...Petitioner/Plaintiff/D.H

1.Grace Devasundaram

2.Stellin Jabha

3.Stellin Subha

4.Gadwin Gawaskar

... Proposed Additional Petitioners.

-Vs-

1. S.Packiam

Rep. by the 2nd respondent Amendment
carried out as per Order in E.A.No.4/2023
dated 02.11.2023.

2.S.Mary Pushpam

...Defendants/Respondents/J.Ds

This Execution application having come before me on 26.03.2024 for final hearing in the presence of Mr.K.Chidambaram, Learned Counsel for the Petitioner/Plaintiff/D.H and Mrs.P.R.Jayarani, Learned Counsel for the 1st Defendant/ 1st Respondent/J.D and set exparte on 28.11.2021 and Mr.R.Pravin, Learned Counsel for the 2nd Defendant/ 2nd Respondent/J.D and upon perusing the case records and having stood over till date for Consideration, this Court deliveres the following:

ORDER

The Petitioner had filed the above Execution Petition, Under Order 21 and under section 146 and 151 of C.P.C 1908, seeking to implead legal heirs of the petitioner late Devasundaram stated in the petition in the above case and thus render justice.

1) Gist of Averments in the Proposed Additional Petitioner's Petition :

The 1st proposed Petitioner's husband Devasundaram is the plaintiff in the above case and she know the facts and circumstances of the case. He filed the above suit for a decree for declaration of title and recovery of possession of plaint A schedule property and for injunction directing the defendant to deliver the plaint scheduled property to the defendant. This Court decreed the suit as prayed for on 24.08.2011. After the decree the respondents neither obliged the order and decree of the Court in O.S.NO.88/2009. So in the above circumstances he filed the E.P. in order to execute the decree in O.S.No.88/2009 for recovery of possession of the plaint A schedule property by removing the illegal construction made in the property. Her husband Devasundaram was expired on 29.07.2020 leaving her as his widow and his daughter stelli Jabha, stellin Subha and a son by name Godwin Gawaskar. The petitioner has intimated the fact to the court on 19.01.2021 and the case is posted on 03.02.2021 to file petition to implead them his legal heirs in the above case. So it is just and proper to implead them in the above E.P. Hence the petitioners have prayed that to implead them in the above E.P. and thus render justice.

2) Gist of Averments in the 2nd Respondents counter :

The Respondent had stated that all the averments stated in the petition are denied as false except those which are specifically admitted herein. In this case already on the side of respondents, a petition was filed to appoint a next friend to the first respondent who is an unsound person who is not able to represent himself. Till a next friend is appointed to the first respondent this petition filed by the petitioner/execution petitioner can't be adjudicated upon. The averments stated in para 3 of the petition are not fully correct. The appeals and its connected proceedings related to the decree passed in O.S.No.88 of 2009 are pending before the Hon'ble first Additional Subordinate Court, Nagercoil. This execution petition is not maintainable since the first appeal against the decree passed in O.S.No.88 of 2009 is pending for adjudication. The petition is not maintainable under law and facts. The petition is lacking bonafide. Hence the respondent prays that to accept the counter and be dismissed the petition.

3) The point for consideration is whether the above petition has to be allowed or not?

4) Point:

Heard both sides. Records perused.

6) On perusal of records, the 1st proposed petitioner's husband Devasundaram was died on 29.07.2020. There is no dispute that the Proposed Additional Petitioners 1 to 4 are legal heirs of deceased Devasundaram.

7) The main objection raised by the respondent in his counter is that since the first appeal against the decree passed in O.S.No.88 of 2009 is pending for adjudication, this execution petition is not maintainable.

8) From the above consideration, this court concludes that, this petition is only to implead the legal heirs of the deceased Devasundaram. Hence, in the interest of justice, this petition is allowed.

9) As a result, this petition is allowed without cost.

Dictated to the Steno-Typist, and typed by her directly in the Computer, corrected and pronounced by me, in open court this, the 22nd day of April, 2024.

I Additional District Munsif,
Nagercoil.

Proposed Petitioners side witnesses and documents : Nil.

Respondent side witnesses and documents : Nil.

I Additional District Munsif,
Nagercoil.

*I ADM Court, Nagercoil.
EA 3/2021 in
E.P.No.19/2019
Draft/Fair Order
Date: 22.04.2024*