

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

Present: Thiru. R. Sundara Kamesh Marthandan, M.L.,

I Additional District Munsif, Nagercoil

Monday, on the 24th day of February 2025

I.A. No. 8 of 2024

in

O.S. No. 224 of 2018

CNR No: TNKK04-000367-2018

1. Hepsiba Gnana Glorital

2. L.S. Ahisha Gnana Merlibah

3. L.S. Jeush Deva Kiruba

...Petitioners/Addl. Defendant's 2 to 4

-vs-

T. Saroja Justus,

rep. by powerholder

Regu Anantha Raj

...Respondent/Defendant

This Petition came before this Court on 13.02.2025 for final hearing in the presence of Mr. C. Victor Sam, Advocate for the Petitioners, Mr. T.Shanmugam, Advocate for Respondents. Upon Perusing the case records, having stood over till date for consideration this Court hereby delivers the following:

ORDER

1. The Petitioners have filed the above Petition Under Section 5 of Limitation Act, seeking an order to condone the delay of 605 days in filing Petition to setaside the exparte decree dated 03.03.2022.

2. The Petitioner had stated that they are the Legal heirs of the deceased Defendant Lazarus Selvin. The Respondent had filed the above Suit, by mentioning the Defendant name as D.Selvin son of Devadhas. Later by filing I.A.No.1 of 2019 the Defendant's name was amended as D.Lazarus son of Devaraj. The Advocate Commissioner who had issued notice to the Defendant had stated that the notice got returned as insufficient address.

3. The Petitioners further stated that on 17.07.2023 when the Amina came to the Petition schedule property to demolish the compound wall and from the business status of the above case, from the Computer, the Petitioners came to know about the Decree, passed in the above suit. The Petitioners have stated that because of the wrong description, of the Defendant's name, the Defendant could not, appear before this Court. Hence, the exparte Decree has to be setaside. There occurred delay of 605 days in filing Petition to setaside Exparte Decree. Hence, the above Petition.

4. The Respondent had filed counter, stating that the above Petition is not maintainable in law as well as on facts. With regard to the visit of Ameena, to the Petition schedule property, in the Execution Petition, the Respondent have no objection. The Respondent had further stated that the Amina visited the deceased Defendant Lazarus, for serving suit summons. The Defendant had refused to receive the summons in the suit. The same resulted in passing exparte Decree, against the Defendant. Both the Defendant and his wife were residing in the same house. As such the Petitioner is also aware of the suit summons, being taken to the Defendant for service.

5. The Respondent had extracted the report submitted by Amin. From the Amin Report, it could be seen that the Defendant was identified by the Amin and that the Defendant had not received the summons, by stating that there is difference in his name and his father's name and that his address is not correctly mentioned, in the summons. He had refused to receive the summons. The Amin report also states that the suit summon sought to be served was sent by post and was refused by the Respondent. It also seen that the deceased Defendant had refused to receive the summons, by stating that his father's name, is not Devadhas, the same is Devaraj and also for the reason that the Defendant's full name was not mentioned in the summons. That apart in I.A. Nos. 2 of 2019, 3 of 2019 and 4 of 2019, paper publications was effected, against the Defendant and as such the Defendant had not appeared before this Court. Thereafter the Defendant was set exparte. The Decree was passed, with the knowledge of the Defendant. The above Petition has been filed after enormous delay, with intent to harass the Respondent/Plaintiff. There is no merit in it. The Petitioners have not filed the above Petition with clean hands. Hence the Respondent prayed for dismissal of the above Petition.

6. The Point for consideration whether, the above Petition is liable to be allowed or not?

7. The Petitioners are the legal heirs of the deceased Defendant. Even according to the Respondent, summons was served on the deceased Defendant by way of paper publication. That apart the Respondents claim that the Defendant's full name and father's name were not correctly mentioned, in the Plaint, is not

specifically denied by the Respondent. That apart, the Respondent/Plaintiff had Petition to amend, the name of the deceased Defendant by filing Application in I.A. No. 1 of 2019 and got those particulars amended. Even after the same, as stated above, the summons in the suit could not be personally served on the deceased Defendant and the service was affected only by way of paper publication. Since the Respondent had not examined the process server, in the above application and also for the reason that in the original Plaint, the full name of the Defendant and his father's address are not correctly mentioned and that the service of summons was effected by way of Paper Publication, this Court is of the considered view that the Petitioners could be given an opportunity to defend the suit, as because the deceased Defendant is no more. The Petitioners have stated that they came to know about the exparte Decree only when the Amin, visited the Petition schedule property, in the execution of the Decree. Hence this Court is of the considered view that the Petition could be allowed.

In the result, the above Petition is allowed. No Cost.

Dictated to the Steno Typist, Transcribed and typed by her, corrected and pronounced by me, in Open Court this, the 24th day of February 2025.

I Additional District Munsif,
Nagercoil.

Petitioners' side witnesses and documents : Nil.

Respondent's side witnesses and documents : Nil.

I Additional District Munsif,
Nagercoil.

I ADM, Nagercoil
Draft/Fair Order
I.A.No.8/2024 in
O.S.No.224/2018.
Date: 24.02.2025