

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

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

Friday, on the 15th day of December 2023.

I.A. No. 3 of 2021 in O.S. No. 340/2012

1.Charlet Kamala Wilson (died)

2.Suresh Harrison

3.Sajatha Victoria

4.W. Rohit

. . . Petitioner/Proposed
Addl. Plaintiffs 2 to 4

-Vs-

1. Charles Christian Victor

2. Joysline Victor

3. Visual Rose Light

4. Vicky Margret Bala

. . . Respondents/Defendants

This petition came before me on December 7, 2023, for final hearing in the presence of Thiru. Aravind A. Wilson, learned counsel for the Petitioner/Plaintiff and proposed addl. Plaintiffs 2 to 4 and Thiru. A. Samuel Edwin, Learned counsel for the 1st Respondent/ 1st Defendant. A court notice was served to the 2 to 5 respondents/2 to 5 defendants, on 24.8.2023. 2nd Respondent present in person on 24.8.2023; others not present; 2 to 5 respondents/2 to 5 defendants sides not present before this Court; and counter

not filed set exparte on 23.11.2023. Upon hearing both sides and upon perusing the case records and having stood over for consideration till this day, this Court hereby delivers the following:

ORDER

1. The petitioner had filed the above petition under Section 5 of the Limitation and Section 151 of the C.P.C., seeking to pass an order to condone the delay of 88 days in filing a petition to implead the legal representatives of the deceased plaintiff as Additional Plaintiffs 2 to 4.

2. Gist of Averments in the Petition:

The petitioner stated that the suit is filed for partition, and there are five items of plaint schedule properties. The Court granted a preliminary decree for the partition of Plaintiff's 1/6th share in all items on July 8, 2014. Against the said decree and judgment, an appeal was filed, and it was remanded on March 20, 2017. The petitioner's mother, who is the plaintiff in this case, died on June 12, 2020, leaving behind himself and proposing additional Plaintiffs 2 and 3 as legal heirs. He also filed an application for a legal heir certificate, but due to the pandemic, it was delayed, and now he has a legal heir certificate. The suit against the plaintiff has been abated, and a delay of 88 days was caused in filing a petition to implead the petitioners as Additional Plaintiffs 2 to 4. If the proposed additional Plaintiffs 2 to 4 are not impleaded, they will suffer irreparable loss and damage. The delay in filing the impleading petition is only

because of the pandemic, and his brother and sister are residing far away from their native place. Hence, the petitioner/Additional Fourth Plaintiff may be pleased to implead the legal heirs of the plaintiff as proposed Additional Plaintiffs 2 to 4 as Plaintiffs in the main suit.

3. Gist of the Averment in the Counter File by the 1st Respondent/1st Defendant:

The 1st Respondent/Defendant stated that in his counter, since the parties in the suit are brothers and sisters, they are well aware of the legal heirs of the deceased plaintiff, and hence there is no necessity for a legal heir certificate. The delay is more than 88 days, and the delay calculated by the petitioner is not correct. Because the date of death of the first plaintiff was June 12, 2020, but the petition was filed on August 9, 2021, the reason for the delay is absolutely false. All legal heirs of the late Charlet Kamala Wilson are residing at Nagercoil, and the same can be seen in the long cause title of the petition. So, the reason for the delay is an acceptable one because legal heirs are residing in remote places, which is not correct. Hence, the 1st respondent or defendant pleaded that the delay was not properly explained and that the petition should be dismissed.

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

5. Heard both sides. Record perused. On perusal of records, the petitioners's mother, i.e., the plaintiff in this case, died on June 12, 2020. This petition was filed on August 12, 2021. The petitioners state that, due to the pandemic, receiving the legal heir certificate was delayed. The reason stated by the petitioners is an acceptable one. However, the petitioners had caused inconvenience to the respondents. Considering the said fact, this Court inclines to allow this petition on condition.

6. In the result, this petition is allowed on the condition that the petitioners shall pay a sum of Rs. 200/- payable to 1st Respondent/ 1st Defendant on or before December 20, 2023; otherwise, this petition would be dismissed automatically. Call on 20.12.2023.

Dictated to the steno-typist, typed by her in the Computer directly, printed, corrected and pronounced by me in open court this the 15th day of December, 2023.

(Sd)/- M.Alima
I Additional District Munsif,
Nagercoil.

Petitioner side witnesses and documents : Nil.

Respondent side witnesses and documents : Nil.

(Sd)/- M.Alima
I Additional District Munsif,
Nagercoil.

IADM Court, Nagercoil.
I.A.No.3/2021 in
O.S.No. 340/2012
Draft/Fair Order
Date: 15.12.2023.