

**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 the 29th day of January 2024.

I.A. No. 4 of 2023 & I.A. No. 5 of 2023 in O.S. No. 340 of 2012

1. Charlet Kamala Wilson (died)
2. Suresh Harrison
3. Sajatha Victoria
4. W. Rohit . . . Petitioners/Proposed
Addl. Plaintiffs 2 to 4

-Vs-

1. Charles Christian Victor
2. Joysline Victor
3. Visual Rose Light
4. Vicky Mercy Bai
5. Vicky Margret Bala . . . Respondents/Defendants

These petitions came before me on 06.01.2024, for a final hearing in the presence of Mr. Anand A. Wilson, Learned counsel for the Petitioners/ Proposed addl. Plaintiffs 2 to 4, and Mr. A. Samuel Edwin, learned counsel for the 1st Respondent/ 1st Defendant. the 2nd to 5th respondents/ 2nd to 5th defendants are already exparte in I.A.No.3/2021. 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**Prayer in I.A. No. 4 of 2023:**

The petitioner had filed the above petition under Order XXII Rule 9 and Section 151, seeking to set aside the abatement cause against the plaintiff in the above suit.

Prayer in I.A. No. 5 of 2023:

The petitioner had filed the above petition under Order XXII Rule 3 and Section 151 of the CPC, seeking to implead the petitioners as legal representatives of the deceased plaintiff as Addl. plaintiffs 2 to 4.

1) Gist of Averments in the Petitioners/Proposed Addl. Plaintiffs 2 to 4's Petitions:

The petitioner submits that the petitioner is the proposed Addl. 4th plaintiff in this suit, and the suit is one for partition. There are five items of plaint schedule properties. The Hon'ble Court granted a preliminary decree for the partition of plaintiff's 1/6th share in all items on 08.07.2014. Against the said decree and judgment, an appeal was filed, and it was remanded on 20.03.2017. After the remand, the petitioner's mother, who is the plaintiff in this case, died on 12.06.2020 leaving behind the petitioner and proposed additional plaintiffs 2 and 3 as legal heirs. The petitioner filed an application for a legal heir certificate, but due to the pandemic, it was delayed, and now the petitioner has a legal heir certificate. Under the above said circumstances, the suit against the plaintiff has become abated, and a delay of 88 days is caused in filing the

petition to set aside the abatement. If the proposed additional plaintiffs 2 to 4 are not impleaded, the petitioner will be put to 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. Therefore, to set aside the abatement caused against the plaintiff in the above suit and to implead the petitioners as legal representatives of the deceased plaintiff as Addl. plaintiffs 2 to 4, the petitions are to be allowed.

2) Gist of Averments in the Respondents'/Defendant's Counters:

The respondent submits that all the averments in the affidavit in support of the petition to set aside the abatement, save those that are specifically admitted hereunder, shall be deemed to be denied. 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 1st plaintiff was on 12.06.2020, but the petition was filed on 09.08.2021 and the reason for the delay is absolutely false. All the legal heirs of 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 delay is an acceptable one because legal heirs are residing in remote places, which is not correct. There is no bonafide allegation in the affidavit. There is no merit in the petition. The petition is not maintainable in law and on facts. Hence, the petitions are to be dismissed.

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

4) Heard both sides. Record perused. On perusal of records, the petitioner's mother, i.e., the plaintiff in this case, died on 12.06.2020. The petitioners state that, due to the pandemic, it was delayed, and they got a legal heir certificate. The reason stated by the petitioners is acceptable. Considering the said fact, this Court inclines to allow these petitions.

5) As a result,

I.A. No. 4 of 2023:

This petition is allowed without cost.

I.A. No. 5 of 2023:

This petition is allowed without cost.

Dictated to the steno-typist, typed by her in the Computer directly, printed, corrected and pronounced by me in open court this the 29th day of January, 2024.

I Additional District Munsif,
Nagercoil.

Petitioner side witnesses and documents : Nil.

Respondent side witnesses and documents : Nil.

I Additional District Munsif,
Nagercoil.

IADM Court, Nagercoil.
I.A.No.4/23 & 5/23 in
O.S.No. 340/2012
Draft/Fair Order
Date: 29.01.2024.