

**IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF,  
NAGERCOIL.**

Present: **Thiru. R.Sundara Kamesh Marthandan, M.L.,**  
Principal District Munsif, (FAC) Nagercoil.

Saturday, on this the 18<sup>th</sup> day of March 2023

**I.A.No. 2 of 2019 and I.A.No. 3 of 2019**

**in**

**O.S.No. 301 of 2014**

I.A.No.2 of 2019:

1. Gomathiammal
2. Nagarajan
3. Karuppaswamy
4. Jeyachandran

... Petitioners/Plaintiffs

-VS-

1. Radhakrishnan
2. Chenthilkumar
3. Muthu Ramalingam
4. Chellam Asari (Died)
5. Nainar Asari
6. Tmt.Jaya
7. Thanga Asari
8. Radhika
9. Sudha
10. Chenthamaraiselvi  
(Pro. Addl. 10<sup>th</sup> Defendant)

...Respondents/Defendants &  
Pro. Addl. 10<sup>th</sup> Defendant

I.A.No.3 of 2019:

1. Gomathiammal
2. Nagarajan
3. Karuppaswamy
4. Jeyachandran

... Petitioners/Plaintiffs

-VS-

1. Radhakrishnan
2. Chenthilkumar
3. Muthu Ramalingam
4. Chellam Asari (Died)

5. Nainar Asari
  6. Tmt.Jaya (Died)
  7. Thanga Asari
  8. Radhika
  9. Sudha
  10. Chenthamaraiselvi  
(Pro. Addl. 10th Defendant)
- ...Respondents/Defendants &  
Pro. Addl. 10th Defendant

These Petitions came up before this Court for hearing on 21.12.2022 in the presence of Thiru.V.Kannan, Advocate for the Petitioners/Plaintiffs and Thiru.Arul Maran, Advocate for the 1<sup>st</sup> Respondent and Thiru.Nallasivan Pillai, Advocate for the 4<sup>th</sup> Respondent and Thiru.C.A.Rajakunjaram, Advocate for the 5<sup>th</sup> Respondent and 3<sup>rd</sup> and 4<sup>th</sup> Respondents/Defendants were set exparte and after hearing the Petitioner's and 5<sup>th</sup> Respondent's Counsel and upon perusing the case records and having stood over for consideration till this day, this Court hereby delivers the following:

### **Common Order**

The Plaintiff had filed the above I.A. No. 2 of 2019 seeking an order to setaside the abatement caused upon the death of 1<sup>st</sup> Defendant in the above suit and I.A. No. 3 of 2019, seeking an order to setaside the abatement caused upon the death of 1<sup>st</sup> Defendant in I.A. No. 527 of 2018.

2. The Petitioners have pleaded that the 1<sup>st</sup> Defendant Radhakrishnan had expired on 21.07.2019 leaving his wife Chenthamaraiselvi as his legal heir and Velsami her adopted female child that Petitioner had stated that the adopted female child has no right over the 1<sup>st</sup> Defendant father's property, she has right

only over the 1<sup>st</sup> Defendant's self acquired property. Hence the 1<sup>st</sup> Defendant's wife Chenthamaraiselvi alone has to be impleaded as 10<sup>th</sup> Defendant in the suit and 10<sup>th</sup> Respondent in I.A. No. 527 of 2018. Further she ought to have been impleaded on or before 18.10.2019 as the full details of the proposed 10<sup>th</sup> Defendant has to be collected, the same could not be filed within the said period. Hence the above petition.

3. The Respondents in his counter have stated that the Petitioner's contention that the adopted child is not entitled to inherit the property of the adopted father is not correct. Both the widow and the child of the deceased are the legal heirs and that both of them have to be impleaded. Hence the above petition seeking to implead only the widow is not maintainable. The above petition is devoid of merits, lacks bonafides and the same is liable to be dismissed.

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

5. The factum as to be demise of the 1<sup>st</sup> Defendant is not disputed by the 5<sup>th</sup> Defendant. However the 1<sup>st</sup> Defendant's wife alone was sought to be implead in the suit as well as I.A.. The plaintiffs have stated that the 1<sup>st</sup> Defendant's wife is the necessary party and that the 1<sup>st</sup> Defendant's adopted daughter could not be termed as legal representative of the deceased 1<sup>st</sup> Defendant. The Plaintiff had filed the about seeking partition and separate portion of plaintiffs 4/7<sup>th</sup> share over the plaint schedule property, by metes and bounds.

6. The Petitioners/Plaintiffs having themselves admitted that the deceased 1<sup>st</sup> Defendant had adopted daughter, however the Petitioners/Plaintiffs have claimed that an adopted daughter is not entitled to the property of the adopted father's father. Incidentally in the above petitions, the Petitioners/Plaintiffs have pleaded facts as to the nature of property, sought to be partitioned in the above suit. The same was raised as point for consideration in the above interlocutory applications. Since the very suit itself is for partition, deciding the nature of property at this interlocutory would amount to prejudging the issues involved in the above suit. As far as the above applications to implead the L.Rs, it would suffice to decide whether the proposed parties who are sought to be implead are the legal representatives of the deceased. Since the Plaintiff had contended that the adopted daughter of the deceased 1<sup>st</sup> Defendant is not the legal representatives of the deceased 1<sup>st</sup> Defendant any adjudication regarding the same will prejudice the issues involved in the suit. Hence this Court refrains itself from deciding the same at this point of time.

7. Further it would be appropriate to mention that at the time of trial the said issue could be adjudicated and it could be ascertained whether the adopted daughter of the 1<sup>st</sup> Defendant is necessary party to the suit or not. At this stage as the suit is filed seeking partition and that the right to defend survives even after the demise of the 1<sup>st</sup> Defendant, this Court accedes to the Plaintiffs prayer i.e. the abatement caused upon the demise of the 1<sup>st</sup> Defendant has to be set aside both in the suit as well as in I.A. No. 527 of 2018.

In the result, the petition in I.A. No. 2 of 2019 is allowed on condition that the Petitioner pays a sum of Rs.300/- (Rupees Three Hundred Only) to the District Legal Service Authority, Kanyakumari District on or before 30.03.2023. Call on 31.03.2023.

In the result, the petition in I.A. No. 3 of 2019 is allowed on condition that the Petitioner pays a sum of Rs.300/- (Rupees Three Hundred Only) to the District Legal Service Authority, Kanyakumari District on or before 30.03.2023. Call on 31.03.2023.

Dictated to the Steno Typist, and typed by her, corrected and pronounced by me, in Open Court this, the 18<sup>th</sup> day of March, 2023.

Principal District Munsif,(FAC)  
Nagercoil.

Petitioners side witnesses and documents : Nil

Respondents side witnesses and documents : Nil

Principal District Munsif,(FAC)  
Nagercoil.

I.A. No.2 of 2019 and  
I.A.No.3 of 2019  
in  
O.S. No.301 of 2014  
Common Draft/Fair Order  
Date: 18.03.2023.  
PDM, Nagercoil.