

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

Present : Selvi. V. Sivaranjani, B.A., L.L.B.,

II Additional District Munsif, Nagercoil

Wednesday, on the 9th day of July, 2025

I.A. No. 6 of 2025 & I.A.No.7 of 2025 in

I.A. No. 8 of 2025 in

O.S. No. 244 of 2013

CNR No.TNKK04-000499-2013

1. R. Selvan (died)

Addl. 2. Lillybai

Addl. 3. Jeghan

Addl. 4. Nizha

Addl.5. Anand

(Amended as per order in I.A.No.5 of 2021
dated 06.12.2021)

... Petitioner/Plaintiff/Additional
2 to 5 Plaintiffs

-vs-

1. S. Rathinam

2. S. Marianthony

3. S. Pushpam

4. S. Raja

5. S. Theodar Jaban

6. S.Thalavai (died)

7. Vijaya Rani

8. Manoda

9. Makisha (Minor)

Addl. 10. Amitha (Minor)

(7th defendant represented for 9 & 10th
defendants as a natural guardian/mother)

... Respondents/ 1 to 5
Defendants

These Petitions came up before me on 08.07.2025 for final hearing in the presence of Thiru.N. Ramadhass, Advocate for the Petitioners/Plaintiffs and Thiru. R. Radhakrishnan Advocate for the 4th Respondent, counter not filed, set exparte and 1st, 2rd, 3rd, 5th and 7th to 10th Respondents were set exparte and 1st petitioner and 6th respondent were died and upon hearing both sides and upon perusing the case records and having stood over for consideration, till this day, this Court delivers the following:-

COMMON ORDER

Prayer in I.A. No. 6 of 2025:

The petitioners have filed the above petition under Order XXII Rule 9 and Section 151 of the Code of Civil Procedure, seeking to pass an order to condone delay of 57 days in filing of set aside the abatement petition in the interest of justice.

Prayer in I.A. No. 7 of 2025:

The petitioners have filed the above petition Under Order XXII Rule 4 and Section 151 of the Code of Civil Procedure, seeking to implead the legal heirs of the 6th defendant Rethnam @ Thalavai as in the suit and it is connected petition.

Prayer in I.A. No. 8 of 2025:

The petitioners have filed the above petition Under Order XXXII Rule 3 (1) and Section 151 of the Code of Civil Procedure, seeking to pass an order to appoint mother Vijaya Rani / 7th defendant as guardian to the 9th respondent / Makisha and 10th respondent / Amitha.

2) **Gist of Averments in the Petitioners/Plaintiffs Petitions :**

The Petitioner is the petitioner herein and petitioner had filed this petition petitioner and for and on behalf of petitioner's three children for this petition. The petitioner's husband R. Selvan has filed this suit for mandatory injunction, a decree for declaration and permanent injunction against the defendants. While pending the case, my husband / the plaintiff R. Selvan was died on 02.05.2018. The petitioners have impleaded as Additional Plaintiffs 2 to 5. Now the 6th defendant was died, but date not known. The petitioner had his wife name Vijaya Rani and their childrens are 1) Manoda, 2) R. Makisha and 3) Amitha, in this respect the 6th defendant's advocate filed a memo dated 05.09.2024 and he stated that they have taken a registered post to the 6th defendant and it was returned as "Expired". So, the above said legal heirs of the deceased 6th defendant / Thalavai @ Rethinam to be impleaded as in the party array if not so, the additional plaintiffs would be get irreparable loss and damages. The petitioners have searching the addresses of the deceased 6th defendant's legal heirs but it could not find out in time. Now, only petitioners find out the address

of the legal heirs of the deceased 6th defendant and after, petitioner had filed a implead petition to implead the legal heir of the deceased 6th defendant. The implead petition and connected petition would be filed on or before 04.01.2025, but for the above said reason, petitioner could not be filed within 90 days. So, the petition was abated against the 6th defendant. As petitioner could not find out the address in time. The petitioner was not able to file the set aside abatement in time. So, there is a delay of 57 days which occurred in filing impleading petition. It has to be condoned. If not so it would cause irreparable loss and damages to us and petitioner's case.

3. The said R. Makisha and R. Amitha are minors. For the proper disposal of the case, guardian has to be appointed for the minors. If not so, it would cause irreparable loss and damage to us and petitioner's case, The mother Vijaya Rani, who is the additional 7th respondent is the natural guardian to the minor child. Under these circumstances, this court to pass an order to condone the delay of 57 days in filing set aside the abatement petition and to implead the legal heirs of the deceased 6th defendant and to appoint mother Vijaya Rani / Additional 7th defendant as the guardian to 9th respondent / Makisha and 10th respondent Amitha. Hence, these petitions are to be allowed.

4) The 4th respondent counter not filed, set exparte and 1st, 2nd, 3rd, 5th and 7th to 10th Respondents were set exparte.

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

6) Point:

7) Heard both sides. Records perused. On perusal of records, the petitioner /plaintiff's wife filed these petitions for and on behalf of her 3 children. The plaintiffs had filed the above suit against the respondents/defendants for declaration, mandatory injunction and permanent injunction and other reliefs.

8) These petitions are to condone the delay of 57 days in filing the set-aside the abatement, to implead the legal heirs of the 6th defendant and to appoint mother 7th defendant as natural guardian to the minor 9th and 10th defendants. Since, the petitioner's husband died on 02.05.2018, additional Plaintiffs 2 to 5 have been impleaded. Subsequently, 6th defendant has also died leaving behind his wife Vijaya Rani and 3 childrens are Monoda, R. Makisha, and Amitha as legal heirs, hence, they should be impleaded. Also, the above said R. Makisha and R. Amitha are minors. Hence, 7th respondent who is the mother of those minors to be appointed as natural guardian. The delay caused to file impleading petition and other connected petitions are only due to the address of the legal heirs of the deceased 6th defendant could not found promptly.

9) In these circumstances, this court has concluded that, in order to come to a proper conclusion regarding the suit issue, the legal heirs of the deceased 6th respondent / 6th defendant are necessary parties and a natural guardian if appointed would be proper to conduct the suit, Moreover, if these petitions are allowed, no prejudice will be caused to the respondents. Hence, to avoid multiplicity of proceedings and for proper adjudication of the suit in the interest of justice, this court is inclined to allow these petitions on conditional cost.

As a result,

I.A. No. 6 of 2025

This petition is allowed, on the condition that the petitioners shall pay a sum of Rs.500/- (Rupees Five Hundred only) payable to the Mediation and Conciliation Centre, Kanniyakumari at Nagercoil on or before 16.07.2025. otherwise, this petition would be dismissed. Call on 16.07.2025.

I.A. No. 7 of 2025

This petition is allowed, on the condition that the petitioners shall pay a sum of Rs.500/- (Rupees Five Hundred only) payable to the Mediation and Conciliation Centre, Kanniyakumari at Nagercoil on or before 16.07.2025. otherwise, this petition would be dismissed. Call on 16.07.2025.

I.A. No. 8 of 2025

This petition is allowed, on the condition that the petitioners shall pay a sum of Rs.500/- (Rupees Five Hundred only) payable to the Mediation and Conciliation Centre, Kanniyakumari at Nagercoil on or before 16.07.2025. otherwise, this petition would be dismissed. Call on 16.07.2025.

Dictated to the Steno-Typist directly, transcribed and typed by her in computer, corrected and pronounced by me in Open Court, this the 9th day of July, 2025.

II Additional District Munsif
Nagercoil.

Petitioners side witness & Documents : Nil

Respondents side witness & Documents : Nil

II Additional District Munsif
Nagercoil.

I.A. Nos.6,7,8 of 2025
in
O.S. No.244 of 2013
Fair Order
Date: 09.07.2025.
II ADM Court, Nagercoil.