

**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 08<sup>th</sup> day of January 2024.

**I.A. No. 6 of 2023 in O.S. No. 348 of 2015**

T.Chithambara Vadivoo (Died)  
W/o. Late K.Murugesu Pillai

Addl.P2. M.Gopi

... Petitioner / Plaintiff

- Vs -

1.B.Pitchai Pillai (died)  
2.Chellappa Pillai  
3.Vellammal  
4.Bgavathy Perumal  
5.Subramania Pillai  
6.Meenakshi  
7.Nagarajan

... Respondents /Defendants  
3 to 7 Proposed parties

This petition came before this court on 06.01.2024 for a final hearing in the presence of Mr.S.Subramaniam, Advocate for the Petitioner/ Plaintiff and Mr.T.SriRam, Advocate for the 2<sup>nd</sup> to 6<sup>th</sup> Respondents/ 2<sup>nd</sup> to 6<sup>th</sup> Defendants and upon hearing both sides, perusing the case records, and having stood over for consideration till this day, this court hereby delivers the following:

**ORDER**

The petitioner had filed the above petition under Order 5, Rule 15, and Section 151 of the CPC, seeking to permit the petitioner to take notice in I.A.No.4/2020 on the 2<sup>nd</sup> defendant for and on behalf of the 7<sup>th</sup> proposed party.

***1) Gist of the Averments in the Petitioner/Plaintiff's Petition:***

The petitioner stated that the petitioner is the additional second plaintiff in the above suit. The above suit was filed for permanent injunction and mandatory injunction against the 1<sup>st</sup> defendant in respect of the plaint schedule property. After the death of the 1<sup>st</sup> defendant, the petitioner took steps to implead all the heirs of the 1<sup>st</sup> defendant in the above suit and in I.A.No.4/2020. All the legal heirs of the 1<sup>st</sup> defendant were served with notice of proposed impleadment except the 7<sup>th</sup> proposed party in I.A.No.4/2020. The petitioner filed an application calling upon the 2<sup>nd</sup> respondent/ 2<sup>nd</sup> defendant to furnish the foreign address of the 7<sup>th</sup> proposed party, who is none other than then 2<sup>nd</sup> respondent's brother. The 2<sup>nd</sup> respondent/ 2<sup>nd</sup> defendant furnished the address of the 7<sup>th</sup> proposed party in I.A.No. 5/2021. The petitioner took steps to serve notice on the 7<sup>th</sup> proposed party based on the foreign address furnished by the 2<sup>nd</sup> respondent / 2<sup>nd</sup> defendant. Even thereafter, the notice could not be served on the 7<sup>th</sup> proposed party. And he has no authorized person to receive summons/notice on his behalf. The time taken to serve notice on the 7<sup>th</sup> proposed party is very high and time-consuming; further, the same has ended up in vain. It has become necessary to seek the permission of this court to serve notice on the 2<sup>nd</sup> respondent/ 2<sup>nd</sup> defendant for and on behalf of the 7<sup>th</sup> proposed party, as he is a senior male member of the defendants family. Thereby, the ends of justice could be done in the matter of service of notice in impleading the legal heirs of the 1<sup>st</sup> defendant. A separate application is filed praying for service of notice on behalf of the 7<sup>th</sup> proposed party, and the petitioner also prays for the same. Hence, the petition is to be allowed.

***2) Gist of the Averments in the 2nd Respondent / 2nd Defendant's Counter:***

The 2<sup>nd</sup> Respondent/ 2<sup>nd</sup> Defendant stated that the averments in the petition are denied except those that are specifically admitted hereunder. This 2nd respondent is the brother of the 7<sup>th</sup> proposed party. But there is no cordial relationship between the brothers. Moreover, the 7<sup>th</sup> proposed party had settled in Dubai. Since 2008 with his family members and for the past more than 15 years, there has been no connection with either the 2<sup>nd</sup> respondent or his family member. The court cannot serve on the 2<sup>nd</sup> Respondent/ 2<sup>nd</sup> defendant, and he cannot accept the notice on behalf of the 7<sup>th</sup> proposed party. The notice can be served to the adult member of the proposed party who is residing with him, but no such person is residing with or available with the Respondent/ 2<sup>nd</sup> respondent/2nd Defendant. Hence, the present petition is not maintainable either in law or on facts. Hence, the petition is to be dismissed.

3) The 3<sup>rd</sup> to 6<sup>th</sup> respondents side counter was not filed.

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

**5) Point:**

The learned counsel for the petitioner submits that, after the death of the 1<sup>st</sup> defendant, the petitioner took steps to implead all the heirs of the 1st defendant in the above suit and in I.A.No.4/2020. All the legal heirs of the 1st defendant were served with notice of proposed impleadment except the 7<sup>th</sup> proposed party in I.A.No.4/2020. The petitioner filed an application calling upon the 2<sup>nd</sup> defendant to furnish the

foreign address of the 7<sup>th</sup> proposed party, who is none other than 2<sup>nd</sup> respondent's brother. The 2<sup>nd</sup> respondent/ 2<sup>nd</sup> defendant furnished the address of the 7<sup>th</sup> proposed party in I.A. No. 5/2021. The petitioner took steps to serve notice on the 7<sup>th</sup> proposed party based on the foreign address furnished by the 2<sup>nd</sup> respondent /2<sup>nd</sup> defendant. Even thereafter, the notice could not be served on the 7<sup>th</sup> proposed party. And he has no authorized person to receive summons/notice on his behalf. The time taken to serve notice on the 7<sup>th</sup> proposed party is very high and time-consuming; further, the same has ended up in vain. It has become necessary to seek the permission of this court to serve notice on the 2<sup>nd</sup> respondent/ 2<sup>nd</sup> defendant for and on behalf of the 7<sup>th</sup> proposed party, as he is a senior male member in the defendants family. Hence, he claimed to be allowing this petition.

5) The learned counsel for the 2<sup>nd</sup> respondent submits that the 7<sup>th</sup> proposed party has settled in Dubai. Since 2008 with his family members and for the past more than 15 years, there has been no connection with either the 2<sup>nd</sup> respondent or his family member. The court cannot serve on the 2<sup>nd</sup> Respondent/ 2<sup>nd</sup> Defendant and he cannot accept the notice on behalf of the 7<sup>th</sup> proposed party. Therefore, he claimed to be dismissed.

6) Heard. Records perused. On perusal of records, I.A.4/2020 was filed by the petitioner to implead the deceased 1st defendant LR's as additional 2<sup>nd</sup> to 7<sup>th</sup> Defendants in suit in I.A.4/2020. Batta paid for the 7<sup>th</sup> respondent, but said notice was returned as "left India." Hence, the court directs the petitioner to issue notice to

the 7<sup>th</sup> respondent's abroad through a proper channel. The 2nd respondent/ 2nd defendant side submits the abroad address of the 7th respondent before this court.

7) The petitioner filed a Batta, and a notice was sent to the 7<sup>th</sup> respondent's abroad address. The said notice was returned as "incomplete address." Hence, this petition was filed.

8) As per Order 5, Rule 15 of the CPC reads thus:

**“15.Where service may be on an adult member of defendant’s family.-** *Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him.”*

9) As per Order 5, Rule 15 of the CPC, the notice can be served to the adult member of the proposed party who is residing with him; in this case, the 7<sup>th</sup> respondent proposed party is not residing with the 2<sup>nd</sup> Respondent/ 2<sup>nd</sup> Defendant. 7th respondent proposed party residing in Dubai. It is not denied by the petitioner either. In these circumstances, Order 5, Rule 15 of the CPC is not applicable in this case. Hence, this court is not inclined to allow the petitioner to take notice in I.A.No.4/2020 on the 2nd defendant for and on behalf of the 7<sup>th</sup> proposed party.

10) As a result, this petition is dismissed. No costs.

Dictated to the Steno - Typist, and typed by her directly in the Computer, corrected and pronounced by me, in open court this, the 08<sup>th</sup> 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.

*Draft/Fair Order  
I.A.No. 6/2023 in  
O.S.No.348/20215  
Date: 08.01.2024  
I ADM, Nagercoil.*