

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

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

Friday, on this the 10th day of February 2023

I.A. No.2 of 2022
in
O.S. No.297 of 2014

Gore Immac Juli alias Ezhil Ruban ... Petitioner/Plaintiff

-vs-

1. Arakanjal ... Respondent/1st Defendant

2. Prop. Addl. Sathiya Jeya Merlin

3. Addl. Anshaika Rai ... Respondents/Prop. Addl. R2 and R3

(Addl R2 and R3 as L.Rs of D2)

This Petition came up before this Court on 30.11.2022, in the presence of Thiru.P.Selvaraj, Advocate for the Petitioner/Plaintiff and Thiru.Samuel Edwin, Advocate for the Respondent/1st Defendant and upon hearing the Petitioner's and Respondent's Counsel and upon perusing the case records and having stood over till date for Consideration, this Court delivers the following:

ORDER

1. The Plaintiff had filed the above Petition seeking an order to condone the delay of 372 days in filing petition to set aside the abatement caused on the death of 1st Defendant. Further the Plaintiff had filed the above suit seeking to declare his title over the Plaint 'B' Schedule Property and for demarcation and fixation of boundaries of Plaint 'A' Schedule Property and for Mandatory

Injunction directing the 1st Defendant to remove the constructions put up by him in the Plaintiff 'B' Schedule Property.

2. Further on 30.11.2019 when the Advocate Commissioner visited the suit property, the Petitioner came to know that the 2nd Defendant namely John Xavier had died on 13.07.2018. Until then the Petitioner has no knowledge about his death, since there is distance of 40 kilometers from the suit property to his residence. As such suit against the 2nd Defendant got abated and there occurred a delay of 372 days in filing the petition to set aside the abatement. Hence the above petition.

3. The 1st Respondent in his Counter had stated that the Petitioner and 2nd Defendant are familiar and that immediately upon the death of 2nd Defendant he came to know about his death. The averment that the Petitioner came to know about the 2nd Defendant death only during the Advocate Commissioner's visit is denied. The delay of each and every day is not explained. Hence the above petition is liable to be dismissed.

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

5. The Petitioner had stated that the death of 2nd Defendant came to his knowledge only on 30.11.2019. On the other hand, though the 1st Respondent denied the same and that he had stated that the Petitioner and the 2nd Defendant are familiar to each other. The 1st Respondent had not stated any incident or

fact, from which it could be inferred that the Petitioner was aware of the 2nd Defendant's death earlier.

6. On perusal of the docket, it is seen that the Counsel who was appearing on behalf of 2nd Defendant had not filed any Memo disclosing the death of 2nd Defendant as envisaged under Order XXII Rule 10(A) C.P.C. It is the Plaintiff's Counsel who had filed memo before this Court on 16.12.2019 in C.F.No.7045/2019 intimating the Defendant of the 2nd Defendant. As such this Court believes the Petitioner's averment that he came to know about the death of the 2nd Defendant only on 30.11.2019. Further the Petitioner had reckoned the delay days from the date of death of 2nd Defendant. Hence this Court is of the considered view that the above petition could be allowed on terms.

In the result, the above petition is allowed on condition that the Petitioner pays a sum of Rs.1,000/- (Rupees One Thousand Only) to the 1st Respondent/Defendant on or before 02.03.2023. Call on 03.03.2023.

Dictated to the Steno-Typist, and typed by her, corrected and pronounced by me, in open court this, the 10th day of February, 2023.

Principal District Munsif,(FAC)
Nagercoil.

Petitioners' side witnesses and documents : Nil

Respondents' side witnesses and documents : Nil

Principal District Munsif,(FAC)
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Draft/Fair Order
Date: 10.02.2023.
PDM, Nagercoil.