

IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF, NAGERCOIL

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

Monday, on this the 1st day of April 2024

I.A. No. 3 of 2023, I.A.No. 4 of 2023 & I.A.No. 5 of 2023

in

O.S. No. 297 of 2014

Gore Immac Juli alias Ezhil Ruban

... Petitioner/Plaintiff

-Vs-

1. Arakanjal

2. Prop. Addl. Sathiya Jeya Merlin

3. Addl. Anshaika Rai

... Respondents/1st Defendant/

(Addl R2 and R3 as LR's of D2)

Prop. Addl. R2 and R3

These Petitions came up before me on 29.02.2024 for final hearing in the presence of Thiru. C.Selvaraj, Advocate for the Petitioner/Plaintiff and Thiru. A.Samuel Edwin, Advocate for the 1st Respondent and the 2nd and 3rd Respondents were set exparte and upon hearing the Petitioners' and 1st Respondent counsels and upon perusing the case records and having stood over for consideration till this day, this Court hereby delivers the following:

ORDER

1. The Petitioner had filed I.A.No. 3 of 2023 seeking an order to set aside the abatement of the suit as against the 2nd Defendant for the failure of the Petitioner to implead the legal heirs of the deceased 2nd Defendant in the suit, within time.

The Petitioner had filed I.A.No. 4 of 2023 under Order XXII Rule 4 CPC

seeking an order to implead the following persons as Additional Defendants 5 and 6 as the legal heirs of the deceased 2nd Defendant in the suit.

The Petitioner had filed I.A.No. 5 of 2023 under Order XXXII Rule 3 seeking an order to appoint the proposed additional 5th Defendant as guardian or next friend of the minor proposed additional 6th Defendant in the suit.

2. In the affidavits filed in support of I.A.No. 3 of 2023, 4 of 2023 and 5 of 2023, the Petitioner had stated that he had filed the above suit seeking declaration of his title over the Plaintiff B schedule property and for demarcation and fixation of boundaries of Plaintiff 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 and for other reliefs.

3. The Petitioner had further stated that the Commissioner had visited the suit property on 30.11.2019 and on that day, he came to know the death of the 2nd Defendant namely John Xavier on 13.07.2018. Since the Petitioner is residing at a distance of about 40 kilometers from the suit property. The Petitioner has no knowledge about the death till the Commissioner's visit to the suit property. Hence he could not file the impleading application in time, to implead the legal heirs of the deceased 2nd Defendant, in the suit as proposed additional 5th and 6th Defendants. Hence the suit against the 2nd Defendant got abated. Hence the Petitioner had come up with the above petition in I.A.No. 3 of 2023 seeking an order to set aside the abatement and I.A.No. 4 of 2023 seeking an order to implead the legal representatives of the deceased 2nd Defendant as additional 5th and 6th Defendants in

the suit and I.A.No. 5 of 2023, seeking an order to appoint the proposed additional 5th Defendant, as the guardian or next friend of the 6th minor Defendant.

4. The Petitioner had also stated that the 6th Defendant is a minor and the 5th Defendant is her mother and that they do not have any inconsistent defense in the suit. Hence the 5th Defendant could be appointed as guardian of the 6th Defendant.

5. The 1st Respondent had filed a counter stating that the Petitioner had not filed the above petitions within stipulated time. The Petitioner's claim that he was living 40 kilometers away from the suit property and he has no knowledge about the death of the 2nd Defendant and he had knowledge only during Commissioner's visit is denied as false. The Petitioner and the deceased 2nd Defendant are family members and the Petitioner is well aware of the death of the 2nd Defendant immediately after his death. As such the reason stated is not believable the delay is willful and deliberate on the part of the Petitioner and hence the abatement cannot be set aside. There is no bonafide in the affidavit. The Petitions are not maintainable in law and on facts and filed by suppressing real facts. Hence the 1st Respondent had prayed for dismissal of the above petition.

6. Notice to 2nd and 3rd Respondents were served and they have also entered appearance through counsel. However the 2nd and 3rd Respondents have not filed any counter. Hence they were set exparte.

7. The Point for Consideration is whether the above petitions have to be allowed or not?

8. With regard to the averment that the 6th Respondent is minor and the 5th Respondent is her mother and that they do not have rival defense, there is no specific denial. Since the right to sue survives upon the demise of the 2nd Defendant and it is stated that the proposed parties are his legal heirs and by considering the reasons stated in the affidavit, filed in support of the above petition, this Court is of the considered view that the above petitions could be allowed on terms.

In the result, I.A.No. 3 of 2023 is allowed on condition the Petitioner pays a sum of Rs. 500/- (Rupees Five Hundred only) to the 1st Respondent on or before 14.04.2024. Call on 15.04.2024.

In the result, I.A.No. 4 of 2023 is allowed on condition the Petitioner pays a sum of Rs. 500/- (Rupees Five Hundred only) to the 1st Respondent on or before 14.04.2024. Call on 15.04.2024.

In the result, I.A.No. 5 of 2023 is allowed. No cost.

Dictated to the Steno typist, transcribed and typed by her, directly in Computer corrected and pronounced by me in Open Court this, the 1st day of April, 2024.

Principal District Munsif,(FAC)
Nagercoil.

Petitioner side witnesses and documents:- Nil

Respondents side witnesses and documents:- Nil

Principal District Munsif,(FAC)
Nagercoil.

Common Fair/ Draft Order
I.A.No.3 of 2023,
I.A.No.4 of 2023 &
I.A.No.5 of 2023
in
O.S. No.297 of 2014
Date: 01.04.2024.
PDM Court, Nagercoil.