

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. 6 of 2023, I.A.No. 7 of 2023 & I.A.No. 8 of 2023

in

O.S. No. 297 of 2014

Gore Immac Juli alias Ezhil Ruban

... Petitioner/Plaintiff

-Vs-

1. Arakanjal

2. Prop. Addl. Radhamony

3. Addl. Abilas

... Respondents/1st Defendant/

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:

COMMON ORDER

1. The Petitioner had filed I.A.No. 6 of 2023 under Section 5 of Limitation Act seeking an order to condone the delay of 524 days in filing petition to set aside the abatement of the suit as against the 3rd Defendant.

The Petitioner had filed I.A.No. 7 of 2023 under Order XXII Rule 9 and

Section 151 CPC seeking an order to set aside the abatement of the suit as against the 3rd Defendant for the failure of the Petitioner to implead the legal heirs of the deceased 3rd Defendant the suit in time.

The Petitioner had filed I.A.No. 8 of 2023 under Order XXII Rule 4 seeking an order to implead the following persons as Additional Defendants 7 and 8 as the legal heirs of the deceased 3rd Defendant in the suit.

2. In the affidavits filed in support of I.A.No. 6 of 2023, 7 of 2023 and 8 of 2023 the Petitioner had stated that he had filed the above suit seeking declaration of 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 Plaint 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 3rd Defendant namely Mony on 10.02.2018. 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 implement the legal heirs of the deceased 3rd Defendant in the suit as proposed additional 7th and 8th Defendants. Hence the suit against the 3rd Defendant has been abated. Hence the Petitioner had come up with the above petition in I.A.No. 6 of 2023 seeking an order to condone the delay of 524 days in filing petition to set aside the abatement of the suit as against the 3rd Defendant and

I.A.No. 7 of 2023 seeking an order to set aside the abatement and I.A.No. 8 of 2023 seeking an order to implead the legal representatives of the deceased 3rd Defendant as additional 7th and 8th Defendants in the suit.

4. The 1st Respondent had filed counter stating that the Petitioner's claim he not filed the above petition within stipulated time, as the Petitioner was living 40 kilometres away from the suit property and that there occurred a delay of 524 days in filing petition to set aside the abatement against the 3rd Defendant and that the Petitioner had no knowledge about the death of the 3rd Defendant and he had knowledge only during Commissioner's visit are denied as false. The Petitioner and the deceased 3rd Defendant are family members and the Petitioner is well aware of the death of the 3rd Defendant, immediately after his death. As such the reason stated is not believable. The delay is wilful and deliberate on the part of the Petitioner. Hence the delay could not be condoned and the abatement cannot be set aside. There is no bonafide in the affidavit. The Petition is not maintainable in law and on facts and have been filed by suppressing the real facts. Hence the 1st Respondent had prayed for dismissal of the above petition.

5. Notice to the 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.

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

7. The reasons stated in the affidavit and counter affidavit of 1st Respondent were considered. Since the right to sue survives upon the demise of the 3rd 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, considering the reason stated in the affidavit filed in support of the above petition this Court is of the considered view that the petitions could be allowed on terms.

In the result, I.A.No. 6 of 2023 is allowed on condition the Petitioner pays a sum of Rs. 400/- (Rupees Four Hundred only) to the 1st Respondent on or before 14.04.2024. Call on 15.04.2024.

In the result, I.A.No. 7 of 2023 is allowed on condition the Petitioner pays a sum of Rs. 300/- (Rupees Three Hundred only) to the Respondent on or before 14.04.2024. Call on 15.04.2024.

In the result, I.A.No. 8 of 2023 is allowed on condition the Petitioner pays a sum of Rs. 300/- (Rupees Three Hundred only) to the Respondent on or before 14.04.2024. Call on 15.04.2024.

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.6 of 2023,
I.A.No.7 of 2023 &
I.A.No.8 of 2023
in
O.S. No.297 of 2014
Date: 01.04.2024.
PDM Court, Nagercoil.