

**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 1<sup>st</sup> day of April 2024

**I.A. No. 9 of 2023, I.A.No. 10 of 2023 & I.A.No. 11 of 2023**

**in**

**O.S. No. 297 of 2014**

Gore Immac Juli alias Ezhil Ruban

... Petitioner/Plaintiff

-Vs-

1. Arakanjal

2. Prop. Addl. Selvi

3. Prop. Addl. Arasu

... 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 1<sup>st</sup> Respondent and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were set exparte and upon hearing the Petitioners' and 1<sup>st</sup> 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. 9 of 2023 under Section 5 of Limitation Act seeking an order to condone the delay of 150 days in filing petition to set aside the abatement of the suit as against the 4<sup>th</sup> Defendant.

The Petitioner had filed I.A.No. 10 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 4<sup>th</sup> Defendant for the failure of the Petitioner to implead the legal heirs of the deceased 4<sup>th</sup> Defendant the suit in time.

The Petitioner had filed I.A.No. 11 of 2023 under Order XXII Rule 4 seeking an order to implead the following persons as Additional Defendants 9 and 10 as the legal heirs of the deceased 4<sup>th</sup> Defendant in the suit.

2. In the affidavits filed in support of I.A.No. 9 of 2023, 10 of 2023 and 11 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 1<sup>st</sup> 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 4<sup>th</sup> Defendant namely Gnanaprakasam on 18.02.2019. 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 4<sup>th</sup> Defendant in the suit as proposed additional 9<sup>th</sup> and 10<sup>th</sup> Defendants. Hence the suit against the 4<sup>th</sup> Defendant has been abated. Hence the Petitioner had come up with the above petition in I.A.No. 9 of 2023 seeking an order to condone the delay of 150 days in filing petition to set aside the abatement of the suit as against the

4<sup>th</sup> Defendant and I.A.No. 10 of 2023 seeking an order to set aside the abatement and I.A.No. 11 of 2023 seeking an order to implead the legal representatives of the deceased 4<sup>th</sup> Defendant as additional 9<sup>th</sup> and 10<sup>th</sup> Defendants in the suit.

4. The 1<sup>st</sup> Respondent had filed counter stating that the Petitioner's claim that the Petitioner had not filed the above petition, within stipulated time as the Petitioner was living 40 kilometres away from the suit property and he has no knowledge about the death of the 4<sup>th</sup> Defendant and he had knowledge only during Commissioner's visit is denied as false. The Petitioner and the deceased 4<sup>th</sup> Defendant are close to each other and the Petitioner is well aware of the death of the 4<sup>th</sup> Defendant immediately after his death. As such the reason stated it is not believable. The delay is wilful and deliberate on the part of the Petitioner and hence the abatement cannot be set aside. There is no bonafide in the affidavit. The Petition is not maintainable in law and on facts and had been filed by suppressing the real facts. Hence the 1<sup>st</sup> Respondent had prayed for dismissal of the above petition.

5. Notice to the 2<sup>nd</sup> Respondent was served. Notice to 3<sup>rd</sup> Respondent returned as Unclaimed. Hence both 2<sup>nd</sup> and 3<sup>rd</sup> Respondent 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 1<sup>st</sup> Respondent were considered. Since the right to sue survives upon the demise of the 4<sup>th</sup> 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. 9 of 2023 is allowed on condition the Petitioner pays a sum of Rs. 400/- (Rupees Four Hundred only) to the Respondent on or before 14.04.2024. Call on 15.04.2024.

In the result, I.A.No. 10 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. 11 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 1<sup>st</sup> 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.9 of 2023,  
I.A.No.10 of 2023 &  
I.A.No.11 of 2023  
in  
O.S. No.297 of 2014  
Date: 01.04.2024.  
PDM Court, Nagercoil.