

**IN THE COURT OF THE II ADDITIONAL DISTRICT MUNSIF,  
NAGERCOIL.**

**Present : Selvi. V. Sivaranjani, B.A., L.L.B.,**  
II Additional District Munsif, Nagercoil.

Wednesday, on the 15<sup>th</sup> day of October, 2025.

**I.A. No. 11 of 2025 in I.A.No.2 of 2023 &**

**I.A. No. 12 of 2025 in I.A.No.3 of 2023 &**

**I.A. No. 13 of 2025 in I.A.No.4 of 2023 in**

**O.S. No. 292 of 2014**

**CNR No.TNKK04-000688-2014**

D. Mary Rani

... Petitioner / Plaintiff

-vs-

1. Yesu Dhasan (died)

2. Arokia Raviselvan

... Respondents / Defendants

These Petitions came up before me on 10.09.2025 for final hearing in the presence of Mrs. K. Ratnasamy, Advocate for the Petitioner / Plaintiff and Thiru. M. Nelson Babu, Advocate for the 2<sup>nd</sup> Respondent and 1<sup>st</sup> respondent is died and upon hearing both sides and upon perusing the case records and having stood over for consideration, till this day, this Court delivers the following:-

**COMMON ORDER****Prayer in I.A.No.11 of 2025 in I.A.No.2 of 2023:**

The petitioner has filed the above petition under Order IX Rule 9 of the Code of Civil Procedure, seeking to pass an order to restore the I.A.No.2 of 2023 which was dismissed for the default on 12.11.2024.

**Prayer in I.A.No.12 of 2025 in I.A.No.3 of 2023:**

The petitioner has filed the above petition under Order IX Rule 9 of the Code of Civil Procedure, seeking to pass an order to restore the I.A.No.3 of 2023 which was dismissed for the default on 12.11.2024.

**Prayer in I.A.No.13 of 2025 in I.A.No.4 of 2023:**

The petitioner has filed the above petition under Order IX Rule 9 of the Code of Civil Procedure, seeking to pass an order to restore the I.A.No.4 of 2023 which was dismissed for the default on 12.11.2024.

**2) Gist of Averments in the Petitioner's Petitions:**

The petitioner is the plaintiff in the above suit. The petitioner has filed the suit for declaration and recovery of possession, Mandatory injunction and Permanent injunction. Since, the defendant died, while the said suit was pending, petitioner had filed a separate petition seeking to condone delay and set aside abatement order caused for impleading the legal heirs of the defendant..

3. In the above, this court had sent a notice to the 2<sup>nd</sup> respondent in the original petition, but since the 2<sup>nd</sup> respondent could not properly served the notice, this court had allowed to take Substituted Service and had directed the publication in a Tamil daily newspaper before 08.11.2024. On that date the petitioner was unable to comply with the court order due to petitioner's ill health. Therefore, this court has dismissed the above original petition on 08.11.2024 for default. The petitioner have been unable to meet petitioner's advocate due to ill health for the past one month. The above default was not intentional but due to God's will. Further, along with these restore petitions. The petitioner has filed a petitions to extent the time limit for the Substituted Service and a petitions for early hearing of the case.

4. Considering the above circumstances, it is expedient for the court to allow these petitions in the interest of justice and fairness. If it is not allowed, otherwise, petitioner would be put into irreparable loss and hardship. . Hence, these petitions are to be allowed.

5. **Gist of Averments in the Respondent's Counters:**

The Respondent had filed counter stating that the petition is not maintainable. There are no valid or sufficient grounds to entertain the petition. With ulterior bad motive to delay the case the plaintiff has deliberately not proceeded with the case. This court has granted more than sufficient time. The

plaintiff is residing next to the house of the original defendant (deceased) and she knows about the death of the original defendant even on the date of his demise i.e. on 12.09.2021 but the plaintiff has deliberately not taken steps to implead the Legal heirs. On 15.09.2021 this court ordered to take steps to implead the legal heirs of the defendant. On 10.10.2023. this court ordered the plaintiff to take steps for substituted service and the plaintiff has successfully dragged on the case. On 08.07.2024 this court was to allow the substituted service petitions and posted the case on 25.08.2024. On 28.08.2024, no representation on the side of the plaintiff so this court adjourned the matter to 04.10.2024. On 04.10.2024 also the plaintiff has deliberately not complied the order of this court and this court adjourned the case to 08.11.2024. On 08.11.2024 also the petitioner/plaintiff has disobeyed the order of this court and this court posted the case on 12.11.2024 as last chance, no further adjournment. On 12.11.2024 also the petitioner/plaintiff has disrespected this court order as a result to passed an order for the dismissal of the petition. The plaintiff has been successfully dragging on the case by one reason or other. It is pertinent to note that previously the suit was dismissed for default.

6. The petitioner/plaintiff was hale and healthy. The alleged bald reason is not a sufficient cause or good cause. The petitioner has miserably failed to adduce any documents to substantiate her contention and which shows gross and patent negligence on part of the petitioner. Eventhough, this court

has granted more than sufficient time for effecting paper publication, the petitioner/plaintiff has deliberately disobeyed the order dated 08.07.2024. This court to pass an order on 12.11.2024 after giving nearly four month time. It is reliably understood that the petitioner / plaintiff has filed this application only on 12.06.2025 i.e. after the lapse of the limitation period. So these petitioners are barred by limitation. Hence, to accept the counter and dismissed these petitions.

7) The point for consideration is whether the above petitions have to be allowed or not?

8) Point:

Heard both sides. Record perused. These petitions are filed by the petitioner herein / plaintiff in the suit / petitioner in order to restore the I.A.Nos.2 of 2023, 3 of 2023 and .4 of 2023. The suit was filed for declaration, recovery of possession, Mandatory injunction and Permanent injunction. When the suit was pending, the defendant died. Therefore, the above I.A.No.2 of 2023, I.A.No.3 of 2023 and I.A.No.4 of 2023 was filed in order to condone delay, set-aside abatement along with the petition to implead the legal heirs of defendant. While in the above petitions, since, summons could not be served, substituted service has been ordered by this court on or before 08.11.2024.

9. For a reason that the petitioner failed to comply the order of substituted service, those above petitioner has been dismissed for default on 12.11.2024. The reason stated by the petitioner for non-compliance is that due

to nearly one month of being sick, the petitioner could not meet his advocate and the delay was neither wanton nor negligent.

10. The respondent has raised the serious contention stated that plaintiff is residing next to the house of the original defendant (deceased) and she knows about the death of the original defendant even on the date of his demise i.e. on 12.09.2021 but the plaintiff has deliberately not taken steps to implead the Legal heirs. Since the petitioner/plaintiff has disrespected this court order by non-compliance, this court passed an order for the dismissal of the petition. The plaintiff has been successfully dragging on the case by one reason or other. It is pertinent to note that previously the suit was dismissed for default.

11. This court passed an order on 12.11.2024 after giving nearly four month time. It is reliably understood that the petitioner / plaintiff has filed this application only on 12.06.2025 i.e. after the lapse of the limitation period. So these petitioners are barred by limitation.

12. These petitions have been dismissed for default on 12.11.2024 and the restore application filed by the petitioner on 26.11.2024. Hence, the limitation is not barred. Therefore, considering the petitioner was being sick for a month, could not complied the order of substituted service, despite no medical documents given to prove the above stated reason, this court is of the considered view to provide a fair opportunity to the petitioner, the above petitions deserved to be restored. Hence, in the interest of justice and in the light of above

discussions this court is inclined allow these petitions on conditional cost.

**As the result,**

**I.A. No. 11 of 2025 in I.A.No.2 of 2023:**

This petition is allowed, on the condition that the petitioner shall pay a sum of Rs.500/- (Rupees Five Hundred only) payable to the Mediation and Conciliation Centre, Kanniyakumari at Nagercoil on or before 22.10.2025. otherwise, this petition would be dismissed. Call on 22.10.2025.

**I.A. No. 12 of 2025 in I.A.No.3 of 2023:**

This petition is allowed, on the condition that the petitioner shall pay a sum of Rs.500/- (Rupees Five Hundred only) payable to the Mediation and Conciliation Centre, Kanniyakumari at Nagercoil on or before 22.10.2025. otherwise, this petition would be dismissed. Call on 22.10.2025.

**I.A. No. 13 of 2025 in I.A.No.4 of 2023:**

This petition is allowed, on the condition that the petitioner shall pay a sum of Rs.500/- (Rupees Five Hundred only) payable to the Mediation and Conciliation Centre, Kanniyakumari at Nagercoil on or before 22.10.2025. otherwise, this petition would be dismissed. Call on 22.10.2025.

Dictated to the Steno-Typist directly, transcribed and typed by her in computer, corrected and pronounced by me in Open Court, this the 15<sup>th</sup> day of October, 2025.

II Additional District Munsif  
Nagercoil.

Petitioner side witness & Documents : Nil

Respondent side witness & Documents : Nil

II Additional District Munsif  
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O.S. No.292 of 2014

Fair Order

Date: 15.10.2025.

II ADM Court, Nagercoil.