

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

Present : Selvi. V. Sivaranjani, B.A., L.L.B.,

II Additional District Munsif, Nagercoil

Monday, on the 9th day of February, 2026

I.A. No.2 of 2023 & I.A.No.3 of 2023 &

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 Dhason (died)

... 1st Respondent/1st defendant

2. Arokia Raviselvan

... 2nd Respondent/Proposed 2nd
defendant

These Petitions came up before me on 24.01.2026 for final hearing in the presence of Thiru. D. Vijay Antony, Advocate for the Petitioner /Plaintiff and Thiru. M. Nelson Babu, Advocate for the 2nd Respondent and 1st 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.2 of 2023:

The petitioner has filed the above petition Under section 5 of the Limitation Act, seeking to condone the delay of 264 days in filing the impleading petition to implead proposed 2nd defendant in the suit.

Prayer in I.A. No. 3 of 2023:

The petitioner has filed the above petition Under Order XXII Rule 4 of the CPC, seeking to implead the legal heirs of deceased 1st Respondent / 1st defendant as 2nd respondent / Proposed 2nd defendant in the above suit.

Prayer in I.A. No.4 of 2023:

The petitioner has filed the above petition Under Order XXII Rule 9 of the Code of Civil Procedure, to set aside the abatement caused to implead the legal heirs of deceased 1st Respondent / 1st defendant as 2nd respondent / Proposed 2nd defendant.

2) **Gist of Averments in the Petitioner /Plaintiff Petitions :**

The petitioner in this petitions is the plaintiff in the original suit filed seeking recovery of possession of the portion encroached upon by the respondent/defendant in respect of the property shown as 'B' Schedule in the plaint; seeking a mandatory injunction for removal of the encroachment in the 'B & C' Schedule properties; seeking a declaratory relief that the 'C' Schedule property is a public pathway; and seeking a Permanent injunction restraining any interference in the 'A & C' Schedule properties.

3. The petitioner filed this petition in I.A No.3/2023 before this court seeking to implead the 2nd respondent / proposed 2nd defendant as the legal heir of the deceased defendant and to add him as the 2nd defendant in this suit, since

the defendant in the suit passed away on 12.09.2021. To confirm the same, the counsel for the defendant has also filed a memo in this case. Further, the petitioner have filed a separate petitions in I.A No.2/2023 and I.A No.4/2023 along with this seeking to set aside the abatement caused due to the death of the defendant and to condone the delay that occurred in filing the application to set aside such abatement.

4. Further the petitioner submits that since the petitioner is presently 80 years old and due to her age, she was unable to properly meet and consult her advocate. Further, the petitioner was frequently suffering from fever and was confined to bed at home. Due to these reasons, could not file a petition to implead the legal heir of the deceased defendant within 90 days, resulting in a delay of 264 days.

5. The 2nd respondent / proposed 2nd defendant shown in this petition is the son of the deceased defendant. Further, during the pendency of the suit, the defendant has fraudulently executed a settlement deed in respect of the suit property in favour of this 2nd respondent / proposed 2nd defendant. Hence, impleading the 2nd respondent / proposed 2nd defendant as a party to the suit, both as a necessary party and as the legal heir of the deceased defendant, is absolutely essential.

6. The above delay was not wilful and occurred due to unavoidable circumstances beyond my control. If these petitions are not allowed, petitioner will suffer irreparable hardship and loss. Allowing this petition would be just, proper, and in the interest of justice.

7. If these petitions are not allowed, petitioner will suffer great hardship and irreparable loss. Therefore, allowing these petitions would be just, equitable, and in the interest of justice.

8. Therefore, petitioner most respectfully pray that this court may be pleased to condone the delay of 264 days that occurred in filing the application to set aside the order of abatement, which arose due to the failure to implead the legal heir of the deceased defendant, and pass orders impleading the 2nd respondent / proposed 2nd defendant as the legal heir and as a necessary party to the suit, Hence, these petitions are to be allowed.

9) **Gist of Averments in the 2nd Respondent's Counters:**

The 2nd respondent's common counter affidavit to I.A. Nos. 2/2023, 3/2023 and 4/2023 are as follows :

10. All the allegations in the petitions except those specifically admitted herein are denied as false, frivolous and vexatious. The petitions are

not maintainable either in law or on facts and there are no valid or sufficient grounds to entertain the same, as the petitioner has deliberately failed to file the petitions within the prescribed limitation period and has miserably failed to show any sufficient cause for the inordinate delay. The petitions filed under Order XXII Rules 4 and 9 CPC and Section 5 of the Limitation Act are unsupported by credible or satisfactory reasons and are liable to be dismissed in limine. In the absence of proper impleadment of the legal representatives within the time stipulated under Order XXII Rule 4 CPC, the suit stood abated automatically by operation of law and such abatement cannot be revived by filing belated and unsubstantiated petitions.

11. The plaintiff, without any semblance of right, title or interest over the plaint schedule property, has filed a frivolous suit and there is no encroachment as falsely alleged; on the contrary, the plaintiff has been protracting the proceedings on one pretext or the other and it is pertinent to note that the suit was earlier dismissed for default, and even prior to the institution of the suit, on 04.09.2014, the deceased defendant executed a settlement deed in favour of his son, which fact was already disclosed in the written statement. The plaintiff is residing adjacent to the house of the deceased defendant and was fully aware of the death of the sole defendant on the very date of his demise, i.e., 12.09.2021, and on 15.09.2021 the respondent's counsel filed a memo before

this court informing the death of the sole defendant, pursuant to which this court directed the plaintiff to take steps to implead the legal representatives, but despite having full knowledge and despite sufficient opportunity, the plaintiff willfully failed to take steps within the statutory period and deliberately allowed the suit to abate with an ulterior motive to drag on the proceedings.

12. The petitioner has falsely stated in the affidavit that "எனக்கு தற்போது வயது 80 ஆகிறது. அதனால் என்னால் வழக்கறிஞரை சரிவர பார்க்க முடியாத சூழ்நிலை ஏற்பட்டுவிட்டது. மேலும் எனக்கு அவ்வப்போது காய்ச்சலும் ஏற்பட்டு படுத்த படுக்கையாக வீட்டிலேயே இருக்கவேண்டிய சூழ்நிலை ஏற்பட்டுவிட்டது", whereas in fact the petitioner was hale and healthy during the relevant period and actively participated in several public and religious functions, including the Holy Mass held on 14.11.2021 at 5.30 A.M, the Village Feast (ஊர் அசனம்) held on 07.12.2021 at 6.30 P.M, and the Holy Mass (திருக்குடும்ப சபை திருநாள்) held on 26.12.2021 at 6.00 A.M at St. Anne's Church, Rajakrishnapuram, and the said events were recorded and uploaded on YouTube in the channel "Rajakai Live", wherein the petitioner is clearly visible and identifiable, completely contradicting her false claim of being bedridden, and the petitioner has not produced a single medical document to substantiate the alleged illness, which clearly shows gross negligence, lack of diligence and absence of bona fides. It is well settled law that abatement takes place

automatically upon expiry of the statutory period unless steps are taken within time, and once abatement becomes final, the proceedings cannot be revived by a belated application, and the present petitions are hopelessly barred by limitation, including under Article 121 of the Limitation Act, 1963. Though the Limitation Act is a beneficial legislation, condonation of delay is discretionary and not a matter of right, and the petitioner has failed to explain the entire period of delay with reasonable, cogent or satisfactory reasons, and courts have consistently held that false, vague and negligent explanations do not constitute sufficient cause. The conduct of the petitioner clearly shows want of bona fides, as she remained silent for a long period without justification and has approached this court only as an afterthought with an ulterior motive to prolong the litigation, and therefore, in any view of the matter, the petitions in I.A. Nos. 2/2023, 3/2023 and 4/2023 are not maintainable and are liable to be dismissed with costs.

13. In order to prove the respective cases, on the side of the 2nd Respondent Exhibits R1 and R2 marked.

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

15) Point:

Heard both sides. Records perused. On the side of the respondent, oral and documentary evidence was adduced. Upon careful perusal and consideration of the same, the court gives its findings and discussion as below:

16. The petitioner is the plaintiff in the original suit filed seeking recovery of possession of the portion encroached upon by the respondent/defendant in respect of the property shown as 'B' Schedule in the plaint, a mandatory injunction for removal of the encroachment in the 'B & C' Schedule properties declaratory relief that the 'C' Schedule property is a public pathway and a permanent injunction restraining any interference in the 'A & C' Schedule properties.

17. On 12.09.2021 the defendant in the suit passed away, the counsel for the defendant has also filed a memo dated 15.09.2021 regarding the same. Thereafter, this court recorded the memo directed the petitioner to take steps to implead the legal heirs. After nearly 7 hearings on 06.06.2022, the petitioner has come up with these petitions to condone delay of 264 days, set aside abatement and to implead.

18. The 2nd respondent / proposed 2nd defendant in this petition is the son of the deceased defendant to be impleaded. The petitioner contends that during the pendency of the suit, the defendant has fraudulently executed a settlement deed in respect of the suit property in favour of this 2nd respondent / proposed 2nd defendant. Therefore, claims to implead the 2nd respondent / proposed 2nd defendant as a party to the suit, both as a necessary party and as the legal heir of the deceased defendant, is absolutely essential.

19. The reason for delay stated is that the petitioner is 80 years old and due to age, she was unable to properly meet and consult her advocate. Further, frequently suffering from fever and was confined to bed at home.

20. The 2nd respondent / proposed 2nd defendant raised serious contention and vehemently argued that the petitioner/ plaintiff, without any right, title or interest over the plaint schedule property, has filed a frivolous suit and there is no encroachment as falsely alleged. Further, the suit was earlier dismissed for default. Also, even prior to the institution of the suit, on 04.09.2014, the deceased defendant executed a settlement deed in favour of his son, the 2nd respondent / proposed 2nd defendant, which fact was already disclosed in the written statement. The plaintiff being adjacent resident to the deceased defendant and despite having full knowledge of the death and

sufficient opportunity, the plaintiff willfully failed to take steps within the statutory period and deliberately allowed the suit to abate with an ulterior motive to drag on the proceedings. The petitioner was hale and healthy during the relevant period and actively participated in several public and religious functions, including the Holy Mass held on 14.11.2021 at 5.30 A.M, the Village Feast (ஊர் அசனம்) held on 07.12.2021 at 6.30 P.M, and the Holy Mass (திருக்குடும்ப சபை திருநாள்) held on 26.12-2021 at 6.00 A.M at St. Anne's Church, Rajakrishnapuram, and the said events were recorded and uploaded on YouTube in the channel "Rajakai Live", wherein the petitioner is clearly visible and identifiable, completely contradicting her false claim of being bedridden, and the petitioner has not produced a single medical document to substantiate the alleged illness, which clearly shows gross negligence, lack of diligence and absence of bona fides. Further, the counsel for the 2nd respondent / proposed 2nd defendant argued that since the petitioner side not turned up to admit the 2 documents viz., (Ex.R1) Pendrive and photocopies of screenshots of the above event's video No. 3 with the petitioner's participation alleged Holy Mass held on 14.11.2021 at 5.30 A.M, the Village Feast (ஊர் அசனம்) held on 07.12.2021 at 6.30 P.M, and the Holy Mass (திருக்குடும்ப சபை திருநாள்) held on 26.12.2021 at 6.00 A.M at St. Anne's Church, Rajakrishnapuram along with 65 B IEA /63 BSA certificate and (Ex.R2) is the Section 65B of the Indian Evidence Act (now Section 63 of the Bharatiya Sakshya Adhiniyam, 2023) certificate produced

before court after notice under Order XII Rule 2 was duly given, the documents shall be deemed to be admitted.

21. This court finds that the fact regarding the plaintiff's title over the suit property and alleged creation of settlement deed in favour of the 2nd respondent / proposed 2nd defendant is a matter of trial and cannot be decided in this petition. Further, with respect to Ex. R1 and Ex.R2, this court could observe that the petitioner has failed to admit or deny the documents within seven days from the date of service of notice. Therefore, even though as per Order XII Rule 2-A, the documents shall be deemed to admitted, the court at its discretion for a reason that the document adduced is an electronic evidence required to be proved.

22. As such, generally a video downloaded from a YouTube link and stored on a pendrive is admissible in court, but only as secondary evidence and strictly if it complies with the requirements of Section 65B of the Indian Evidence Act (now Section 63 of the Bharatiya Sakshya Adhinyam, 2023). It requires proving that the video is authentic, untampered, and was recorded in the ordinary course of business.

23. In the instant case, the petitioner has given Section 65 B certificate with information as to that the petitioner has downloaded the uploaded video from the youtube link in his own laptop on 31.10.2025, transferred to pen drive. For the same, the petitioner furnished full details regarding the laptop but failed to disclose details regarding the pendrive. Therefore, this court is of the view that the 2nd respondent / proposed 2nd defendant failed to prove that the video is an authentic and non-manipulated one. In addition to that, it doesn't disclose the exact date and time of the concerned church's Holy Masses and the Village Feast happened and thereby this court could not come to the conclusion that the plaintiff in the particular video attended the church functions in the abovesaid relevant period when the petitioner keeps mum in court proceedings without taking steps to implead. Further, this court at the threshold discard photocopies of screenshots as it is prone to photoshopping and fabrication.

24. Despite the respondent failed to prove that the petitioner was hale and healthy at the relevant period, this court finds that there was a delay caused due to petitioner's negligence since the petitioner too filed no medical documents to prove the reason of illness and bedridden.

25. Hence, This court at this juncture thinks proper to cite *Collector, Land Acquisition, Anantnag & Anr. vs Mst. Katiji & Ors. 1987 AIR 1353, 2*

SCC 107, wherein the *Hon'ble Supreme court* gives the below findings:

(i) substantial justice should prevail over technical considerations. The term "sufficient cause" in Section 5 is flexible enough to achieve substantial justice.

(ii) No litigant has a right to succeed solely due to the other party's delay.

(iii) Courts should adopt a liberal approach to avoid legalizing injustice on technical grounds.

(iv) The requirement to explain every day's delay should be applied practically and reasonably, not pedantically.

26. On the above grounds, this court comes to the conclusion that to decide the matter on merits, for effective adjudication, considering the proposed defendant being a necessary party to the suit and the cause of action survives against him, this court is of the considered view that the delay caused to be condoned, abatement to be set aside and the 2nd respondent / proposed 2nd defendant to be impleaded by adequately compensated with the cost. In the light of above facts, this court is inclined to allow these petitions on conditional costs.

I.A. No. 2 of 2023

This petition is allowed, on the condition that the petitioner shall pay a sum of Rs.1,000/- (Rupees Thousand only) payable to the 2nd Respondent/Proposed 2nd defendant on or before 13.02.2026. otherwise, this petition would be dismissed. Call on 13.02.2026.

I.A. No. 3 of 2023

This petition is allowed, on the condition that the petitioner shall pay a sum of Rs.1,000/- (Rupees Thousand only) payable to the 2nd Respondent/Proposed 2nd defendant on or before 13.02.2026. otherwise, this petition would be dismissed. Call on 13.02.2026.

I.A. No.4 of 2023:

This petition is allowed, on the condition that the petitioner shall pay a sum of Rs.1,000/- (Rupees Thousand only) payable to the 2nd Respondent/Proposed 2nd defendant on or before 13.02.2026. otherwise, this petition would be dismissed. Call on 13.02.2026.

Dictated to the Steno-Typist directly, transcribed and typed by her in computer, corrected and pronounced by me in Open Court, this the 09th day of February, 2026.

II Additional District Munsif
Nagercoil.

Petitioner's side witness :- - Nil -

Petitioner's side Documents:- - Nil -

Respondent's side witness: - Nil -

Respondent's side Documents:

Ex.A1	...	Pendrive 16 G.B and Photos (3 Nos.)
Ex.A2	...	Certificae Under Section 65(4) B of the Indian Evidence Act

II Additional District Munsif,
Nagercoil.

I.A. Nos.2, 3 and I.A.No.
4 of 2023 in
O.S. No.292 of 2014
Fair Order
Date: 09.02.2026.
II ADM Court, Nagercoil.