

In the Court of Additional District Munsif, Padmanabhapuram.

Present: **Selvi.V.Viswatha, B.A.,LL.B(Hons),LL.M.,**

Additional District Munsif.

Thursday, the 07th day of April 2022

I.A.No. 4 of 2021 in I.A.No.2 of 2020 in O.S.No.30 of 2020

J.Ayyappan.

.. Petitioner/Plaintiff ..

/ Vs. /

1. M.S.Philipose.
2. Balakrishnan.
3. Rajaiyan.
4. Latha.
5. Arul.
6. Packyadhas.

.. Respondents/Defendants ..

This petition is presented before me for final hearing, in presence of Mr.S.Sivakumar, learned counsel for the Petitioner and Mr.T.Micheal Ratheesh, learned counsel for the 1st respondent and Mr.M.Beslin Jegadheese, learned counsel for the respondents 4 to 6. Upon hearing the counsel for petitioner side and on perusal of the records stood over for consideration till this day, this court passed the following:-

ORDER

This petition is filed under Order 22 Rule 9 and Section 151 of the Civil Procedure Code to set aside the abatement in I.A.No.2/2020.

3. Brief of petition facts is as follows:-

The petitioner herein is the plaintiff in the suit which is one for Declaration of Easement right of grant and permanent injunction restraining the defendants. It is stated that the 3rd respondent in I.A.No.2/2020 by name Rajaiyan has died on

05.09.2020. It is stated that the legal heirs of deceased Rajaiyan has to be impleaded in I.A.No.2/2020. It is stated that after the death of deceased Rajaiyan 1. Balakrishnan, 2. Arumugam, 3. Kala, 4. Raja, and 5. Suseela are the legal heirs of the deceased Rajaiyan. It is stated that the legal heirs of deceased Rajaiyan, the 2nd respondent Balakrishnan is already party in I.A.No.2/2020 petition. It is stated that the court may be pleased to record the 2nd respondent as the legal heirs of deceased Rajaiyan in this petition. It is stated that due to lack of knowledge, the legal heirs of the deceased Rajaiyan have not been impleaded in this petition within 90 days. So, this petition is abated. It is stated that the court be pleased to set aside the abatement in I.A.No.2/2020 and render justice, otherwise, petitioner will put into irreparable loss and hardship.

3. Respondents have not filed counter.

4. Heard the counsel for petitioner side and perused the records stood over for consideration.

5. Now the point for consideration is whether the petition is liable to be allowed or not?

6. The petitioner/plaintiff states that the suit is filed for the relief of declaration of easementary right and permanent injunction. It is stated that the legal heirs of deceased Rajaiyan has to be impleaded in I.A.No.2/2020. The petitioner states that the petition has got abated, however it is stated that non impleading of legal heirs of Rajaiyan is neither willful nor wanton. On considering the facts and circumstances of this case and procedures being the handmaid of justice there shall not be any stringent view in deciding this petition. Further this petitioner being the dominus litus is

entitled to implead the parties necessary for deciding this petition. Further the petitioner has stated Balakrishnan, Arumugam, Kala, Raja and Suseela are the legal heirs of deceased Rajaiyan. With the discussion made supra, this court decides to allow this petition by setting aside the abatement in I.A.No.2/2020.

7. In the result, this petition is allowed. No costs.

Dictated to the Steno-Typist directly, typed by her in computer, corrected and pronounced by me in open court, on this 07th day of April 2022.

Additional District Munsif,
Padmanabhapuram.

ADMC Padmanabhapuram.

I.A.No.4/2021 in I.A.No.2/2020 in OS.No.30/2020

Draft/Fair Order:

Dt: 07.04.2022.