

IN THE COURT OF ADDITIONAL DISTRICT MUNSIFF , VALLIYOOR

Present: Mithuna.A.Kaiser, Additional District Munsif, Valliyoor
Wednesday, On the 12th day of November 2025.

I.A.No.6/2025, I.A.No.7/2025 & I.A.No.8/2025

In

O.S.No.219/2015

Balasubramanian

.... Petitioner/plaintiff

-Vs-

1. Samy @ Mani (Died)

2. Kittu @ Esakkimuthu

... 1, 2 Respondents/defendants

3. Velammal

4. Sindu

5. Subulakshmi

6. Iyappan

... 3 to 6 respondents/Proposed 3 to 6 defendants

This petition came before this court on 04.11.2025 for final hearing in the presence of Thiru.T.Veeramohanrai, Learned counsel for the petitioner, Thiru.R.Pandiaraja, Learned counsel for the 1st & 2nd respondents, Thiru.Petchimuthu, Learned counsel for the 3rd to 6th respondents and upon hearing both sides, perusing the case records, and having stood over the consideration till this day, this court hereby delivers the following:

COMMON ORDER

1.1. The petitioners/ 1 to 10 plaintiffs and 11th proposed plaintiff had, filed, the petition under Section 5 of limitation act to condone the delay of 195 days to set aside abatement of deceased plaintiff No.1, petition under Order XXII Rule 9 of CPC, to set aside abatement of deceased plaintiff No.1 and petition under Order XXII Rule 3

to implead the 11th petitioner/11th proposed plaintiff as legal heir of deceased plaintiff No.1.

1.2. Heard both sides, records perused. The petitioner/ plaintiff had filed the suit for the relief of permanent and mandatory injunction. Now petitioner/plaintiff had filed this petition to condone the delay in setting aside the abatement against the deceased 1st defendant, to set aside the abatement order passed against the deceased 1st defendant and to implead the legal heirs of deceased 1st defendant as 3 to 6 defendants. The contention of the petitioner is that the first defendant had actually died on 18.10.2023. However, the counsel for the defendants had filed a memo on 04.08.2025, stating the death of the 1st defendant. Only then the petitioner came to know about the actual date of death and the legal heir particulars of the deceased 1st defendant. Hence, the petitioner has filed the present petitions to restore the suit against abated deceased 1st defendant and to implead his legal heirs. The petitioner contends that the delay was neither willful nor wanton and that the same occurred due to the misleading statement of the 2nd defendant.

1.3. Per contra, the 2nd defendant countered that the petitioner/plaintiff was very well aware of the death of the 1st defendant in 2023 itself, since both were residing in the same locality. Therefore, the petitioner cannot plead ignorance, and the delay in taking steps to implead the legal heirs is deliberate. It is further contended that blaming the 2nd defendant for the petitioner's inaction is improper, and hence, the petitions are liable to be dismissed.

1.4.Points of consideration:- On consideration of the rival submissions and the materials placed on record, the petitioner has to satisfactorily explain the reasons for the delay in setting aside the abatement order and in impleading the legal heirs of the deceased 1st defendant. In the present case, the reason assigned by the petitioner appears to be bona fide, and no mala fide intention is made out. The explanation by the petitioner that he was unaware to disclose the death of 1st defendant under a genuine impression and the fact of deceased 1st defendant came to light only on memo filed by the 2nd defendant on 04.08.2025, whereas the 1st defendant died on 18.10.2023, thus it cannot be lightly brushed aside. Hence, this Court is of the view that the petitioner has shown sufficient cause to condone the delay and to set aside the abatement order. As sufficient cause is shown and no deliberate negligence is attributable to the petitioner, the delay in filing a petition to set aside abatement is condoned in the interest of justice.

1.5. In regard to the necessity of impleading the legal heirs, this Court finds that the nature of the suit involves both permanent and mandatory injunction, the legal representatives are necessary parties to ensure proper adjudication of the issues involved and the legal heirs of the deceased defendant are essential to determine their rights and obligations over the suit property. This Court holds that through the injunction suit, the right to sue survives and requires adjudication in the presence of the legal heirs of the deceased 1st defendant. Hence, this Court is inclined to allow the petitions.

In the result, the petitions filed under Section 5 of limitation act, Order XXII Rule 9 and Order XXII Rule 4 of Civil procedure code, are hereby allowed. No costs.

This Order dictated to the Typist, directly typed in computer by him, corrected and pronounced by me in open Court, on 12th day of November 2025.

Additional District Munsif,
Valliyoor.

Witnesses examined on the side of Petitioner and Respondents: Nil

List of Documents on the side of the Petitioner and Respondents: Nil

Additional District Munsif,
Valliyoor.

Additional District Munsif Court,

Valliyoor

I.A.No.6/2025,

IA.No.7/2025

&

IA.No.8/2025

in

O.S.No.219/2015

Draft/Fair Order

Dated: 12.11.2025