

In the Court of the Principal District Judge,
Principal District Court, Kancheepuram.

PRESENT: **Tmt. Deepthi Arivunithi, M.L.,**
Principal District Judge,
Principal District Court ,
Kancheepuram.

Wednesday the 28th day of January 2026

IA.No.4/2022 and I.A.No.5/2022 in O.S. No.105/2022

IA.No.4/2022 and I.A.No.5/2022

R. Santhosham ...Petitioner/Plaintiff

Vs

1. S. Udhayakumar
2. S. Udhayashankar
3. S. Thirumani
4. S. Suresh
5. K. Bama
6. Santhakumari
7. Mythili
8. Vijay

.. Respondents/Defendants.

Thes petitions are coming on 12.01.2026 for final hearing before me in the presence of M/s. Y. Thiagarajan and K. Arumugham, Counsels appearing for the Petitioner in both petitions and Thiru.K. Jayavel, Counsel appearing for the respondents 1 to 4 and M/s. S. Ramamoorthy and R. Balaji, Counsels appearing for respondents 5 to 8 * 5, 7 and 8 in both petitions and upon hearing the arguments on both sides and upon perusal of records and having stood over the matter for consideration till this day, this court delivered the following

* amended as per order on memo dated on 27.02.2026

* amended as per order on memo dated on 27.02.2026

COMMON ORDER

Petition in I.A. No. ~~6~~* 5 of 2022 is filed under Order I Rule 10 C.P.C to strike the name of the 6th defendant. Petition in I.A. No. 5 * 4 of 2022 under Order I Rule 10 C.P.C. to renumber the defendants 7 and 8 as defendants 6 and 7 and to implead the proposed parties as defendants 8 and 9.

2. The learned counsel for the petitioner/plaintiff would contend as follows. The main suit is filed for a relief of declaration of title and for an injunction against the defendants from interfering with his peaceful possession and enjoyment. The petitioner filed an interim injunction petition in I.A. No. 2 of 2022 and an interim injunction was granted in favour of the petitioner. While so, the counsel for the respondent 1, 2 and 4 filed a memo along with the death certificate of the 6th defendant and has submitted that the 6th defendant died prior to the filing of the suit. He would state the said there is an earlier litigation pending between the parties in A.S. No. 89 of 2011. Initially the learned counsel for the respondent refused to give particulars of the legal heir. The petitioner included the name of the 6th defendant on the bonafide ground that she was alive. She is also contesting an appeal against the petitioner. The petitioner has filed a comprehensive suit for declaration and injunction and therefore, the present petition is filed to include the legal heirs of the deceased 6th defendant as the defendants 8 and 9. Hence, that the petitions be allowed.

3. The learned counsel for the respondents would contend as follows. The petitioner has obtained an order of interim injunction against a dead person inspite of knowing about the death of the 6th defendant herein. Further, the petitioner has deliberately not filed the petition under Order XXII Rule 4 C.P.C. and has filed the present petition under Order I Rule 10 C.P.C. The present petition has been filed in a backdoor method to rectify the mistake committed in the suit. The suit has been filed based on a wrong cause of action by way of misrepresentation. Hence, that the petitions be dismissed.

4. Upon hearing both sides and having perused the materials on record, this court finds as follows. The main suit is filed for declaration and for injunction. It appears that an interim injunction petition was filed by the petitioner/plaintiff in I.A. No. 2 of 2022 to restrain the respondents/defendants from interfering with the possession and enjoyment of the petitioner/plaintiff. By way of order dated 02.06.2022 an interim injunction was granted in their favour. While so, on the next hearing a memo was filed stating that the 6th respondent died. Upon perusal of the records, it is seen that a memo dated 17.06.2023 was filed along with the death certificate of the 6th defendant. From the death certificate it is seen that the 6th defendant died on 03.01.2019. However, the learned counsel for the petitioner would state that they were not aware of the death of the 6th defendant. The learned counsel for the respondents would contend that there is deliberate attempt by the plaintiff to mislead the court and to obtain an injunction against a dead person. The learned

counsel for the respondent would rely upon the decision reported in CDJ 2001 MHC 945 and CDJ 1963 Kar HC 073 to support his contentions.

5. Another contention is raised on the ground that the petitions were not filed under Order XXII Rule 4 C.P.C. to include the legal representatives and therefore, that the petition under Order I Rule 10 C.P.C. is misconceived. The learned counsel for the petitioner/plaintiff would contend that this court has the powers to add or strike off parties under Order I Rule 10 C.P.C. In the present case, since the documents reveal that the 6th defendant died prior to the suit, it is necessary to strike off the name of the 6th defendant. However, to safeguard the interest of the said persons, her legal representatives may be added as parties in exercise of powers under Order I Rule 10 C.P.C.

6. Upon hearing both sides and having perused the materials on record, this court finds as follows. The main suit is filed for permanent injunction and mandatory injunction against the respondents/defendants herein. It is the case of the petitioner/plaintiff that the respondents/defendants were initially inducted as tenants of the petitioner/plaintiff. While so, they have denied the title of the petitioner/plaintiff and are also trying to interfere with the possession of the petitioner/plaintiff who is the owner of the suit property. The present petition is filed to strike off the name of the 6th defendant who is said to have died on 03.01.2019. The petitioner/plaintiff would state that they were unaware of the death of the 6th defendant and therefore included her name in the suit. While so upon the memo filed

by the respondents/defendants, the petitioner/plaintiff took immediate steps to file the present petition to strike off her name. Since an application to strike off the name is filed, another petition was filed under Order I Rule 10 C.P.C. to include the legal heirs of the deceased in order to safeguard the interest of the deceased person.

7. The learned counsel for the respondents has relied upon the decision reported in CDJ 1963 Kar HC 073 to contend that the present petition is not maintainable. In view of the said contention, this court has carefully perused the decision relied upon. Upon perusal, it is seen that the said case arose out of a suit which was filed against a sole defendant who died prior to filing of the said suit. In that context, the Hon'ble High Court has observed as follows. In the present suit, there are 7 defendants arrayed in the suit. It is settled position of law that when there are more than one defendants, the suit does not abate on the death of one of the defendants. Hence, the decision relied upon cannot be applied to the facts of the present case.

8. Since the 6th defendant died prior to the filing of the suit, this court finds that the name of the 6th defendant can be struck off. The petitioner/plaintiff seeks to implead the legal representatives of the deceased 6th defendant as defendants in the present suit. The name of the 6th defendant is ordered to be struck off. Hence, filing of a petition under Order XXII Rule 4 C.P.C. does not arise. In this regard, this court finds it relevant to advert to the decision of the Hon'ble Supreme Court of India in the case of Pankajbhai Rameshbhai Zalavadia v. Jethabhai Kalabhai Zalavadiya

(Deceased) Through LRs & Ors reported in 2017 (6) CTC 54 (SC), wherein it was observed as follows.

“As mentioned supra, it is only if a defendant dies during the pendency of the suit that the provisions of Order 22 Rule 4 of the Code can be invoked. Since one of the defendants i.e. defendant No.7 has expired prior to the filing of the suit, there is no legal impediment in impleading the legal representatives of the deceased defendant No.7 under Order 1 Rule 10 of the Code, for the simple reason that the plaintiff in any case could have instituted a fresh suit against these legal representatives on the date he moved an application for making them parties, subject of course to the law of limitation. Normally, if the plaintiff had known about the death of one of the defendants at the time of institution of the suit, he would have filed a suit in the first instance against his heirs or legal representatives. The difficulty that application filed by the plaintiff under Order 1 Rule 10 of the Code discloses, with great respect, a hyper-technical approach which may result in the miscarriage of justice. As the heirs of the deceased defendant no.7 were the persons with vital interest in the outcome of the suit, such applications have to be approached keeping in mind that the Courts are meant to do substantial justice between the parties and that technical rules or procedures should not be given precedence over doing substantial justice. Undoubtedly, justice according to the law does not merely mean technical justice but means that law is to be administered to advance justice.

15. Having regard to the totality of the narration made supra, there is no bar for filing the application under Order 1 Rule 10, even when the application under Order 22 Rule 4 of the Code was dismissed as not maintainable under the facts of the case. The legal heirs of the deceased person in such a matter can be added in the array of parties with Section 151 of the Code subject to the plea of limitation as contemplated under Order 7 Rule 6 of the Code and Section 21 of the Limitation Act, to be decided during the course of trial. In view of the above, the impugned judgment of the High Court is set aside. The appeal is allowed. The Trial Court is directed to implead the legal representatives of deceased defendant no. 7 and bring them on record, subject to the plea of limitation as contemplated under Order 7 Rule 6 of the Code, as well as under Section 21 of the Limitation Act, 1963, to be decided during the trial.”

A perusal of the above decision would show that an application under Order I Rule 10 C.P.C. is maintainable in the present case. It is represented before this court that the suit was filed against the 6th defendant under a bonafide impression that she was alive. There is no material produced to show that the petitioner/plaintiff was aware of the death of the 6th defendant at the time of filing the suit. There is no specific allegation with regard to any act committed by the 6th defendant in the plaint to prima facie show any malafides. Hence, this court finds that there is no material to show lack of bonafides on the part of the petitioner/plaintiff in filing the present petition. It is the case of the petitioner/plaintiff that the proposed parties are interested in the subject matter of the suit, it is also stated that they have impleaded themselves as parties in the connected appeal suit which is pending adjudication. Hence, the said proposed parties can be considered as proper and necessary parties to the suit. Thus, this court finds that the present petition has to be allowed.

9. The learned counsel for the respondents/defendants have raised several contentions with regard to the bonafides of the petitioner/plaintiff in filing the suit by impleading the 6th defendant as a party. The said contentions may not be relevant for the purpose of the present petition. However, the respondents/defendants are at liberty to raise the said contentions at the appropriate stage.

10. In result I.A. No. 4 of 2022 and I.A. No. 5 of 2022 is allowed without costs.

//This common order has been partly dictated by me to the Stenographer, transcribed and typed by her in the computer, corrected and pronounced by me in the open Court on this the Wednesday the 28th day of January 2026//

Sd./- Deepthi Arivunithi
Principal District Judge,
Principal District Court,
Kancheepuram.

Exhibits and Witnesses on both side: NIL.

Sd./- Deepthi Arivunithi
Principal District Judge,
Principal District Court,
Kancheepuram.

Draft/Fair Common Order
I.A.No.4/2022 and
I.A.No. 5/2022 in
O.S.No. 105/2022
D.D. 28.01.2026
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