

**IN THE COURT OF PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM, KANCEEPURAM DISTRICT**

**PRESENT: TMT.R. Rajeswari,B.Com.,L.L.M.,
Principal District Munsif, Kanchipuram**

On Tuesday, this the 8th day of November 2022

IA.No. 3 of 2022
In
O.S.No. 121 of 2020

R. Gunasekaran

...Petitioner/Plaintiff

/Versus/

1. V.Vanaja
2. S. Vajjiram (died)
3. V. Senthil
4. M. Ramamoorthy
5. S. Saroja
6. V. Chamundeeswari
7. R.Rajeswari
8. S. Vijayakumar
9. The Special Tahsildar,
Town Survey Land Tax Scheme,
Kanchipuram.
10. The Inspector Survey,
Town Survey Land Tax Scheme,
Kanchipuram.
- 11.The State of Tamil Nadu rep by
the District Collector, Kancheepuram

...Respondents/defendants

12. Palani

...Respondent/Proposed Party
12th defendant

This petition has come up on 17.10.2022 for final hearing before me in the presence of Thiru.B.Sivakumar, advocate for the petitioner and Thiru.V.Tamilarasu, advocate for the respondent and upon hearing the arguments of both sides and upon perusing the connected material

records and having stood over till this day for consideration, this court delivers the following:

ORDER

1. This petition is filed under Section 5 of Limitation Act to condone the delay of 246 days in filing the application to set aside the abatement of the above suit against the deceased 2nd defendant.

2. The case of the petitioner as stated in his affidavit is as follows:-

The petitioner submitted that the 2nd defendant Vajjiram died leaving behind his wife V.Vanaja, 1st defendant sons V.Senthil, 3rd defendant, and one Palani, the 12th respondent/proposed 12th defendant, as his only legal heirs. The 1st and 3rd defendant, who were already on record. The cause of action for the suit survives upon them also. The 12th respondent may be impleaded as 12th defendant in the above suit as one of the legal heirs of the 2nd defendant along with 1st and 3rd defendants.

3. The petitioner submitted that the petitioner was taking treatment for his eyes at Chennai and hence the petitioner is not able to file the legal heir application to implead the legal heirs of the deceased 2nd defendant in time. The petitioner filed an application to set aside the abatement of the suit as against the deceased 2nd defendant. There is a delay of 246 days in filing the application to set-aside the abatement. The above said delay is due to the petitioner's health

condition and the same is beyond the petitioner's control. Hence, the delay of 246 days to be condone in filing the application to set aside the abatement of the above suit against the deceased 2nd defendant. Hence this petitioner filed this petition.

4. The respondent filed his counter and the gist of the same is as follows:-

The respondent submitted that the petitioner in this affidavit did not mentioned the date of death of the 2nd defendant. Without mentioning the date on which the 2nd defendant died, the petitioner calculated that there is a delay of 284 days in filing the petition. The petitioner filed the above suit against the 1 to 8 defendants for Permanent Injunction. Hence, there is no necessity for the petitioner to implead the legal heirs of the deceased 2nd defendant in this suit. There is no cause of action lies against the proposed party (Palani). The petitioner did not submit any proof for the delay in filing the application. This petition is also not maintainable as this suit is filed for permanent injunction against 1 to 8 defendants. Hence, this petition may be dismissed.

5. The point for consideration in this petition is whether this petition is to be allowed or not.

The Point:

6. The learned counsel for the petitioner argued that the 2nd defendant

Vajjiram died leaving behind his wife V.Vanaja, 1st defendant, sons V.Senthil, 3rd defendant, and one Palani, the 12th respondent/proposed 12th defendant, as his only legal heirs. The 1st and 3rd defendant, who were already on record. The cause of action for the suit survives upon them also. The 12th respondent may be impleaded as 12th defendant in the above suit as one of the legal heirs of the 2nd defendant along with 1st and 3rd defendants. The petitioner was taking treatment for his eyes at Chennai and hence the petitioner is not able to file the legal heir application to implead the legal heirs of the deceased 2nd defendant in time. There is a delay of 246 days in filing the application to set-aside the abatement. The above said delay is due to the petitioner's health condition and the same is beyond the petitioner's control. Hence, the petitioner's counsel prayed to allow this petition.

7. The Respondent counsel argued that, the petitioner in the affidavit did not mentioned the date of death of the 2nd defendant. Without mentioning the date on which the 2nd defendant died, the petitioner calculated that there is a delay of 284 days in filing the petition. The petitioner filed the above suit against the 1 to 8 defendants for Permanent Injunction. Hence, there is no necessity for the petitioner to implead the legal heirs of the deceased 2nd defendant in this suit. There is no cause of action lies against the proposed party (Palani).

The petitioner did not submit any proof for the delay in filing the application. Hence, the respondent counsel prayed to dismiss this petition.

8. Heard both sides argument. Records perused.
9. The main suit was filed by the petitioner for permanent injunction against the 1 to 8th defendants restraining them and their men and agents from in anyway interfering with plaintiffs peaceful possession and enjoyment of the suit property.
10. The petitioner stated in the plaint that the cause of action against the 1 to 8th defendants arise on 07.10.2019. At the time of filing the suit no cause of action arise against the proposed party namely Palani who is the legal heir of the deceased 2nd defendant. Hence, there is no need to implead the proposed party as the 12th defendant in this suit. The proposed party is not a necessary party to this suit. Hence this petition is liable to be dismissed.
11. In the result, the petition is dismissed. No cost.

Dictated to the typist, who directly typed the same in his computer, corrected and pronounced by me in open court, this the 8th day of November 2022.

PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM