

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, KULITHALAI**Present : Selvi.A.Yughathymariya, B.Com, L.L.B.(Hons.,)****Additional District Munsif, Kulithalai.****Dated Tuesday, the 03rd day of March 2026****I.A No.04/2025 in O.S No.164/2013**

Senthilkumar

...Petitioner /Plaintiff**- Vs -**

1) Chandra

2) Kalaimani

...Respondents/ Defendants.

This petition has come up for final hearing on 20.02.2026 before this Court in the presence of Mr.RM.Sivakumar, the Learned Counsel appearing for the Petitioner the Respondent No.1 died and PP1 to PP6 called absent and set exparte and in the presence of the Mr.B.Malarkannan, the Learned Counsel appearing for the Respondent No.2 and upon perusal of material records and having stood over for consideration till this day, this court delivers the following:

ORDER

This petition is filed by the Petitioner/Plaintiff under Order 22 Rule 9 of CPC seeking permission of this Court to set aside the abatement of the suit as against the 1st Defendant.

2) The Proposed Parties No.1 to 6 are remained exparte. The 1st Respondent died.

Brief averments in the affidavit:

3) The Petitioner is the Plaintiff in the above suit. During the pendency of the suit, the 1st Defendant Chandra died on 13.01.2022. However, the Counsel for the Defendants did not report this matter before this Court and as such the Petitioner was

not aware of this fact. Very recently only, when the Petitioner obtained knowledge about demise of the 1st Defendant Chandra, the Petitioner enquired about her legal heirs and with great difficulty, the Petitioner was able to gather correct particulars about them.

4) For effective and binding adjudication, the legal heirs of the 1st Defendant need to be impleaded in the above suit. Further, there cannot be a decree against a dead person. Due to the lack of knowledge of the demise of the 1st Defendant Chandra, the Petitioner could not bring the legal heirs of the 1st Defendant on record in time. As such a delay of 1100 days occurred in setting aside the abatement order in bringing the legal heirs of the 1st Defendant. Unless the abatement is set aside, the Petitioner will be put to serious loss. In the interest of justice, the abatement against the 1st Defendant has to be set aside. Hence, this petition.

A Memo has been filed by the 2nd Respondent seeking to adopt the counter of the 2nd Respondent herein filed in I.A.No.3/2025 as his counter herein. The brief of the Counter objection filed on behalf of the 2nd Respondent in I.A.No.3/2025 as follows:

5) This petition is unsustainable in law or on facts. The Petitioner is not entitled to the relief sought for this petition. Except those averments which are specifically admitted by the Respondent herein are all averments denied as false and the Petitioners are bound to prove the same. The fact that the 1st Defendant in the above suit was died on 13.01.2022 has to be proved by the Petitioner only. The Petitioner on 25.09.2024 has filed his chief examination affidavit and after the same, no documents were filed by him. However, on 18.02.2025 a memo has been filed by the Petitioner counsel before this Court by stating that the 1st Defendant died on 13.12.2022 and this petition has been filed with delay of 1100 days. The reasons stated by the Petitioner for the delay caused is not acceptable. By not proceeding with this suit for about 12 years, in order to drag on the suit proceedings and to

intentionally harass the 2nd Respondent, this petition has been filed by the Petitioner without any reasons. No documents were filed by the Petitioner to show the date of death of the 2nd Defendant and her legal heir particulars. No legal heir details of the 2nd Defendant was shown in this petition. Hence, this petition is liable to be dismissed with costs.

Point for consideration:

6) Whether the Petitioner is entitled to the relief sought for or not?

Evidence:

7) There is no oral and documentary evidence adduced on either side.

Discussion:

8) Heard both sides. Records perused. Upon perusal of records, it could be seen that when the above suit has been posted for cross examination of PW1, on several occasions before this Court, on 18.02.2025 a memo has been filed by the Plaintiff counsel by stating that D1 Chandra was died on 13.01.2022. It is also seen that thereafter sufficient opportunities were given to the Plaintiff to take steps for the deceased 1st Defendant in the above suit. However, the Plaintiffs have not taken steps for the 1st Defendant for long period of time.

9) Subsequently, on 16.06.2025 only this petition along with other petitions have been filed by the Petitioner/Plaintiff. The reasons stated by the Petitioner is that the death of the 1st Defendant was not brought to the knowledge of the Plaintiff and he was not aware of this fact. Moreover, very recently only the Petitioner had obtained the knowledge about the demise of the 1st Defendant and he enquired about the legal heirs with great difficulty to gather correct particulars about them. Further, the Petitioner contented that due to the lack of knowledge of the demise of the 1st

Defendant the Petitioner could not bring her legal heirs on record in time and a delay of 1100 days has occurred in setting aside such abatement and in bringing the legal heirs of the deceased 1st Defendant. Also, the Petitioner alleged that if the abatement is not set aside, the petitioner will be put to irreparable loss and hardships.

10) Per contra, the 2nd Respondent had mainly objected that the Petitioner had not produced the death certificate and legal heirship certificate of the deceased 1st Defendant in order to prove her date of death and to show her legal heirs particulars. Further, the petitioner alleged that without any proper valid reasons for a huge delay of 1100 days caused on the side of the Petitioner in setting aside the abatement as against the 1st Defendant, this petition has been filed by the Petitioner only to drag on the above proceedings and to harass the 2nd Respondent. Therefore, the 2nd Respondent sought this Court to dismiss this petition with costs. The Proposed Parties No. 1 to 6 were remained *exparte*.

11) Upon careful consideration of the submissions made on both sides and upon perusal of records, it could be seen clear that the Petitioner alleged that the 1st Defendant died on 13.01.2022 and a memo to that effect was filed only on 18.02.2025 which is about three years later on the side of the Petitioner/Plaintiff. However, the reasons stated by the Petitioner is that the death of the 1st Defendant was not brought to his knowledge by the Defendants and hence, such huge delay happened.

12) Though the reasons stated by the Petitioner is found acceptable, it could be seen that a huge delay of more than three years have been occurred in setting aside the abatement caused as against the 1st Defendant in the above suit. The delay of each and every day must be explained, however the Petitioner has to give justifiable and acceptable reasons for the delay caused. The reasons stated by the Petitioner is found acceptable. Therefore, this Court is of the considered view that such technical irregularities such as abatement caused as against the 1st Defendant in the above suit

may be condoned in the interest of justice in order to render fair, complete and binding adjudication among the parties to the suit. Therefore, in the interest of justice this Court is inclined to allow this petition.

Result:

In the result, for all the above reasons stated, this petition is allowed. No costs.

Dictated to my steno-typist, taken down by her in short hand and typed by her in the computer, corrected by me and pronounced by me in the open court on this the 03rd day of March 2026.

**Additional District Munsif,
Kulithalai.**

Petitioner side witness and documents	-	Nil.
Respondents side witness and documents	-	Nil.

**Additional District Munsif,
Kulithalai.**