

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 29th day of April 2025

I.A No.07/2025 in O.S No. 202/2017

- 1) Shanmugam
- 2) Vijayalakshmi
- 3) Balasubramani
- 4) Thangavelu

.....Petitioners/Defendants

/Vs/

- 1) Raju @ Subramanian
- 2) Thulasi
- 3) Durai Chettiyar (Died)
- 4) Senthilkumar
- 5) Sivanantham
- 6) Thiruvengadam
- 7) Arun @ Arunkumar
- 8) Thapakkiam
- 9) Selvam
- 10) Vengadachalapathy
- 11) Santhi

.....Respondants/Plaintiffs

This petition has come up on 24.04.2025 for final hearing before this court in the presence of Mr.B.Malar Kannan, learned counsel for the Petitioners/Proposed Parties and Mr.R.Krishnasamy, learned counsel for the Respondants No.2, 4 to 9 and the Respondants No.1, 10 and 11 are remained exparte and Respondant No.3 died and upon perusal of material records and having stood over for consideration till this day, this court delivers the following....

ORDER

1. This petition is filed Section 5 of the Limitation Act, 1963 to condone the delay of 139 days in setting aside the abatement of the suit against the 1st Plaintiff named Shanmugam in the above suit.

Brief averments of the Petition:-

2. That the 1st Petitioner/Proposed Party is the wife of the deceased Shanmugam who is the 1st Plaintiff in the above suit. That the above suit was filed against the Defendants for the relief of Permanent Injunction and Mandatory Injunction. That when the above suit was pending, on 04.03.2024 the 1st Plaintiff named Shanmugam was died. That the proposed parties No.1 to 3 herein are the only legal heirs of the deceased Shanmugam. The Proposed parties No.2 and 3 are the Sons of the deceased Shanmugam. That except these proposed parties no other legal heirs are there for the deceased Shanmugam. That On or before 02.06.2024, the petition to implead the legal heirs of the deceased Shanmugam ought to have been filed. But due to the ill health condition of the proposed party No.1, the death of the said Shanmugam could not have been immediately intimated to his counsel. Hence the delay. That if this petition is not allowed the proposed parties would be put to irreparable loss and hardships and if this petition is allowed, it would no way prejudice the Respondents herein. That the delay is not wanton. Hence this petition is been filed to condone the delay of 139 days in filing the petition to set aside the abatement caused against the 1st Plaintiff Shanmugam in the above suit and to implead his legal heirs.

Brief averments of the counter filed by the Respondents No.2, 4 to 9:-

3. That the petition is not sustainable. That the petitioners are not entitled to the relief sought for. That it is not correct that the above proposed parties are the only legal heirs of the deceased Shanmugam. The Petitioners/Proposed parties in order to wantonly drag on the proceedings, failed to file the petitions to set aside the abatement and to implead the legal heirs on time. That the reasons stated in the

affidavit for the delay happened are not correct. Hence this petition is liable to the dismissed.

4. The Respondents No.1, 10 and 11 are remained exparte and the respondent No.3 died.

Points for determination:-

5. Whether this petition is entitled to be allowed?

Evidence:-

6. No oral and documentary evidence were adduced on either sides.

Points:-

7. Heard both sides. Perused records. It is seen clear that the 1st Plaintiff in the above suit named Shanmugam was died on 04.03.2024. The Petitioners/Proposed Parties are the wife and the sons of the deceased Shanmugam. This petition has been filed to condone the delay of 139 days in setting aside the abatement caused against the deceased Shanmugam in the above suit and to implead his legal heirs. The reasons stated by the petitioner/Proposed party No.1 for the delay caused is that her health condition was bad, for which she could not be able to contact her counsel immediately. It is also seen that there is no strong objection placed by the respondents herein, as to the reason stated by the proposed parties. This court is of the view that the reason stated by the proposed parties for the delay caused is found sufficient. This court also feels that if this petition is allowed, it would no way prejudice the respondents herein. Hence, this court is inclined to allow this petition. However, the Respondents have been put to inconvenience due to the delay caused by the petitioners' failure to act promptly. To balance the equities, this court deems it fit to impose costs on the Petitioners as a condition for allowing this application.

Result:-

In result, for the reasons stated above and in the interest of justice, this petition is allowed. Hence, the delay of 139 days caused in filing the petition to set aside the

abatement and to implead the legal heirs of the deceased 1st Plaintiff in the above suit is hereby condoned. The petitioners shall pay a cost of Rs.250/- to the Respondents No.2, 4 to 9 herein, on or before 12.05.2025, failing which this order shall stand automatically vacated.

Dictated to my typist, directly typed by her in the Court computer, corrected and pronounced by me in the open court on this 29th day of April 2025.

Sd/-A.யுகாதிமரியா

**Additional District Munsif,
Kulithalai.**

Petitioner side witness and documents - Nil.

Respondents side witness and documents - Nil.

Sd/-A.யுகாதிமரியா

**Additional District Munsif,
Kulithalai.**

