

**IN THE COURT OF THE SUBORDINATE JUDGE, MELUR.**

**Present: Tmt. M. SAMUNDEESWARI PRABHA, M.A., M.L.,**

Thursday, the 12<sup>th</sup> day of June 2025

**I.A.No.5/2024**

**in**

**I.A.No.1/2022**

**in**

**O.S.No.145/2021**

Kartheeswari

..... Petitioner / Petitioner/Impleading  
Petitioner

// Vs //

1. Muthuraja

..... Respondent/Respondent/Plaintiff

2. Nagendran

3. Sivaperumal

4. Subbaiah

5. Tahsildar, Melur

6. District Collector, Madurai

..... Respondent/Respondent/Defendants

This petition coming up on 25.02.2025 for final hearing before me in the presence of Advocate.Thiru.M.Paramasivam, Advocate for the petitioner and Advocate.Thiru.SP.Kannan, Advocate for the 1<sup>st</sup> respondent and Advocate.Thiru.K.Sethupathi, Advocate for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents and Advocate.Thiru.B.Murugan, Advocate for the 4<sup>th</sup> respondent and Advocate.Thiru.K.Sabhapathy, Government Pleader Advocate for the 5<sup>th</sup> and 6<sup>th</sup> respondents and upon hearing enquiry on both side and having stood over for consideration till this day, this court delivered the following:-

### **ORDER.**

This petition has been filed Under Order 9 Rule 9 and Section 151 of CPC pass an order to restore I.A.No.1/2022 which is dismissed for default on 03.01.2024.

#### **1. Brief averments of the petition :-**

The petitioner herein and also petitioner in impleading petitioner / proposed defendant in the main suit. The respondent/plaintiff filed the suit for declaration to declare the plaintiff is a legal heir of deceased Chinnaperumal. The said deceased Chinnaperumal is her paternal uncle (Periyappa) and he was adopted the petitioner as her daughter for which her was executed a will infavour of the petitioner and declared the petitioner as a legal heir of her. By suppressing the above facts, the plaintiff filed the present suit to declare them as legal heirs of her adopted father, without added the petitioner as a party defendant.

Hence the petitioner filed impleading petition to implead her as one of the defendant in the Suit in O.S No.145 of 2021 and same was numbered in I.A.No.1/2022.

The respondent/plaintiff also filed their counter in the above said I.A.No.1/2022. Thereafter the case was posted for her side enquiry. But for the last few years the petitioner taking treatment for hyper blood sugar and blood pressure & other ailments. For which, the petitioner have to go to the hospital weekly thrice and also the petitioner was advised not to travel to long distance by her doctor. Because of her medical and personal issues, the petitioner could not communicate her counsel properly and enquire about her case status. But the petitioner was on the fond hope that, her counsel will take care of her case. Per contra, due to the communication gap, her counsel her failed to represent her case on behalf of the petitioner.

The petitioner counsel has not appeared for argument. Finally on 03.01.2024 her impleading petition I.A.No. 1/2022 was dismissed for default, because of non appearance of her counsel. The petitioner prays to pass an order to restore I.A.No.1/2022 which is dismissed for default on 03.01.2024. Hence this petition has to be allowed.

**2. Brief averments of the counter affidavit filed by the 4<sup>th</sup> Respondent/ 3<sup>rd</sup> Defendant :-**

The 4<sup>th</sup> respondent herein and 3<sup>rd</sup> defendant in the original suit. The petition is not maintainable either on law or on facts. Save and except those that are hereinafter admitted expressly and all other allegations made in the affidavit are all false and are hereby denied. The

petitioner has filed an application to implead herself as a party to the suit as I.A.No:1/2022 wherein the 4<sup>th</sup> respondent have filed his counter affidavit and the same maybe treated as part and parcel of this affidavit. The application I.A.No:1/2022 when the petitioner has failed to proceed the application filed by her for the reasons best known to her and leave the petition as dismissed for default for non-prosecution as early as on 03.01.2024 and after the dismissal of I.A, PW1 was cross examined by his side on 18.03.2024. The PW1 was filed his chief examination on 11.10.2022 and when the case is posted for marking of documents the petitioner has filed I.A.No:1/2022 and the same was disposed on 03.01.2024.

The Petitioner/Petitioner/proposed Defendant is the tool at the hands of the plaintiff. With an intention to extract money in the name of suit the from 4<sup>th</sup> respondent, the Plaintiffs as well as the Petitioner have prolonged the suit without any progress with an intention to delay in disposal of suit. The application for restoration of I.A was filed on 16.04.2024 after lapse of 4 months without assigning any valid or acceptable reason whatsoever, simply by stating she as well as her previous have failed to follow the case and filed this application. Further the petitioner has not produced any document to show about her alleged ailment, disease, nature and length of treatment. Hence this petition has to be dismissed with costs.

**3. The point for consideration aroused is that:-**

*Whether the petition has to be allowed or not?*

**4. Point.**

Both sides heard. Records perused. This court finds that this application has been filed by the 3<sup>rd</sup> party one Mrs.Kartheeswari who is the petitioner in IA.No.1/2022 for impleading her as a party to the suit. The above said IA.1/2022 has been dismissed for default. Hence this application has been filed to take up the IA.1/2022 since the petitioner Mrs.Kartheeswari ( 3<sup>rd</sup> party) stated that she is one of the legal heirs of the deceased Chinnaperumal who treated her as his own daughter. Hence in order to give an opportunity to the petitioner Mrs.Kartheeswari to substantiate her case on merits, this court inclines to pass an conditional order in favour of the petitioner.

**5. Result:-**

*In the result, this petition is allowed subject to the payment of cost of Rs.2000/- to the 4<sup>th</sup> respondent/3rd defendant who has filed his counter statement on or before 24.6.2025. Failing which this petition stands dismissed. For payment of cost of Rs.2000/-. Call on 24.6.2025.*

Dictated to the Steno - Typist, and typed by her in office computer, corrected and pronounced by me, this the 12<sup>th</sup> day of June 2025.

**Sub Judge,  
Melur.**

**BOTH SIDES OF THE DOCUMENTS AND WITNESS:- NIL**

**Sub Judge,  
Melur**

**Fair/Draft Order  
in  
I.A.No.5/2024  
in  
I.A.No.1/2022  
in  
O.S.No.145/2021  
Dt : 12.06.2025  
Sub court, Melur**