

IN THE COURT OF ADDITIONAL DISTRICT JUDGE, MAYILADUTHURAI.

Present: Thiru P.Elango, B.Sc., M.L.,  
Additional District Judge  
Monday, the 6th day of March 2023  
IA. No.2/2022 in O.S. No.10/2019

. . .

1. Mohana  
2. Padma  
3. Sumathi . . . Petitioners / Plaintiffs

Vs

1. Sekar  
2. Arumugam  
3. Palani  
4. Amudha  
5. Prema  
6. OS-42, The Sirkali Co-op. Primary  
Agriculture and Rural Development Bank,  
by its Special Officer / Secretary . . . Respondents / Defendants

7. Saradha  
8. Aravindan . . . Proposed parties

This petition is coming up before me on 24.02.2023 in the presence of Tr. S. Raman advocate for the petitioners and Tr. R. Sivapunniyam advocate for the respondent No.1, Tr. B. Rengaraju advocate for the respondent No.2, Tr. A. Jagadeesan advocate for the respondents No.4 and 5, Tr. K. Balamurugan advocate for the respondent No.6 and respondents No.3, 7, 8 were remained exparte and upon hearing both side and considering the connected records, this Court made the following

ORDER

This petition is filed under sec.5 of Limitation Act seeking condonation of delay of 15 days in filing legal heir petition.

1. The averments of petition affidavit in short:

The 1<sup>st</sup> petitioner filed affidavit and the other two petitioners were her sisters. The father of petitioner namely Vadivel Chettiyar died on 14.01.1978 as intestate and her mother Thiripuram died on 04.12.2015 as intestate. The father of petitioners acquired the suit properties and treated all properties as joint family properties till his death. Though a small portion was purchased in the name of mother out of love and affection, she never claimed independent title to the same. The parents of petitioner are having five daughters and three sons. The respondents No.1 to 3 were legitimate legal heirs and succeeded to the estate in equal share and enjoying the properties in common. Since the above decided to divide the properties after the death of mother few month before the suit the petitioners demanding partition and separate possession. Though the R1 to 3 delayed the same finally shows the xerox copy of Will dated 11.10.1999 claiming their share and the R1 alone gave a false reply on 16.03.2019. There after the petitioners filed the suit for partition and it was posted in the list on 06.07.2022. But unfortunately the brother of petitioner namely Pazhani died on 30.03.2022 leaving behind his wife and son as his legal heirs. The above said wife and son of deceased Pazhani ought to be impleaded as D7 and D8. The above said application has to be filed within 90 days from the death of Pazhani / D3 are expired on 30.06.2022. Due to old age of petitioners they could not file the application in time and they did not know that they have to be impleaded. Therefore there was a delay of 15 days in filing LR petition which is neither willful nor wanton. Therefore the petitioner prays to condone the delay of 15 days in filing LR petition for the deceased D3 Pazhani.

2. The averments of counter of R2 in short:

This respondent denies all averments of petition affidavit. The petitioner has to prove the delay of 19 days. The averments of petitioner that due to old age

and infirm health is not correct. The petitioner not stated any date from which she was suffered due to illness. The petitioner is well educated and know the death of Pazhani on 30.03.2022. She attend the funeral at Pondicherry and she will knows that the legal heirs of Pazhani has to be added to suit. Further she knows that within 90 days the application to implead the legal heir to be added. Therefore this respondent prays to dismiss the petition with cost.

3. The points for determination is:

Whether the petitioners were entitle for the prayer as sought for?

4. Solution:

The petitioners side stated that they were filed the suit for partition against the respondents in which the brother of petitioner namely Pazhani died on 30.03.2022 leaving behind his wife Saradha and son Aravindan. The petition to implead the legal heirs to be filed within 90 days. But it is not known to the petitioners and hence there was a delay of 15 days in filing legal heir petition. Therefore the petitioners prays to condone the delay of 15 days in filing legal heir petition against the deceased D3 Pazhani. In this situation on perusal of records the suit was posted in the list for trial on 06.07.2022 and on that day the petitioners side filed a memo as D3 was is died. It shows that the petitioners side knows that the death of D3 on 30.03.2022 itself, but they were filed this petition with intention to drag on the matter and to avoid the commencement of trial. In this situation the reasons stated by petitioners side as the petitioners did not know the legal heirs to be impleaded within 90 days is no way acceptable. In this situation the contesting respondents side object that the petitioners well known the fact of death of Pazhani / D3 on 30.03.2022 and the petitioners attend the funeral function at Pondicherry. Further it is relevant to mention here that this petitioner side failed to file any application to set aside the abatement as per Art.121 of Limitation Act. In considering the all above circumstances it is cleared

that the petitioners side in order to avoid the commencement of trial filed this application with delay as stated above. Therefore it is decided to allow this application subject to cost.

On deposit of Rs.1,000- (one thousand) by petitioners to DLSA Nagapattinam on or before 14.03.2022 this petition is allowed. Failing which this petition stands dismissed. Call on 15.03.2022.

Dictated to the steno-typist, transcribed and computer typed by her and corrected and pronounced by me in the open Court today this the 6th day of March 2023.

Additional District Judge,  
Mayiladuthurai.

Order: (Fair & Draft)  
I.A. No.2/2022 in

O.S No.10/2019  
Dated: 06.03.2023