

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.3/2022 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
7. Saradha
8. Aravindan

. . . Respondents / Defendants

. . . 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. Sivapunniam 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 O22 R4 CPC seeking to implead the legal heirs of deceased D3.

1. The averments of petition affidavit in short:

The 1st petitioner filed affidavit and the other petitioners were sisters. The father of petitioners namely Vadivel Chettiyar died on 14.01.1978 and her mother namely Thiripuram was died on 14.12.2015 as intestate. The father of petitioners acquired suit property and treated all properties as joint family properties till his death. Though small portion was purchased in the name of mother of the petitioners, she never claimed independent title for the same. The parents of petitioner having five daughters and three sons. The petitioners were succeeded to the estate in equal shares and therefore the petitioners filed the suit for partition. In this situation the brother of petitioner namely Pazhani / D3 died on 30.03.2022 leaving behind his wife Saradha and son Aravindan as his legal heirs. The above said legal heirs of D3 were necessary parties to the suit. Therefore the petitioners prays to implead the legal heirs of deceased D3 as D7 and 8 in the main suit.

2. The averments counter of R2 in short:

This respondents denies all allegations and averments of petition affidavit as false. The petitioner has to prove the delay of 19 days. The averments of petitioner that due to old age and ill-health are not correct. The petitioner not stated any date from which she was suffering her illness. The petitioner is a well educated and knows the death of Pazhani on 30.03.2022 and she attend the funeral at Pondicherry and she will knows that the legal heirs of Pazhani has to be added to suit. In order to drag on the matter the petitioners filed this application belatedly. Therefore the respondents 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. Mean while, the D3 Pazhani who is the brother of the petitioner died on 30.03.2022 leaving behind his wife Saradha and son Aravindan as his legal heirs. They were necessary parties to the suit and therefore the petitioners prays to implead the legal heirs of deceased D3 as D7 and D8 in the main suit. In this situation this petitioners filed another application in IA. No.2/2022 to condone the delay in filing this petition. It is no doubt that the legal heirs of deceased D3 were necessary parties to the suit. The petitioners side filed this application and delay condoning petition when the suit was posted in the list for trial on 06.07.2022 without filing any petition for setting aside the abatement. Therefore the above said delay condoning petition was ordered to allow on payment of cost. Hence on deposit of cost imposed in connected IA. No.2/2022 it is also decided to allow this application.

In result on deposit of cost imposed in connected IA. No.2/2022 this petition is allowed. Failing which this petition also stands dismissed. Call on 15.03.2023.

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.3/2022 in
O.S No.10/2019
Dated: 06.03.2023