

IN THE COURT OF II ADDITIONAL DISTRICT & SESSIONS JUDGE,
ARAKKONAM, RANIPET DISTRICT.

Present: Tmt.K.S.Jayamangalam, M.L.,

II Additional District & Sessions Judge,
Arakkonam.

Tuesday the 15th day of July 2025.

I.A.Nos.5/ 2025 to 9/2025 in O.S.No.158/2024

I.A.No.5/2025 in O.S.158/2024

T.R.Subramanian

...Petitioner/Plaintiff

/vs/

1. J.D.Philamen Raj (died)

2. J.D.Xavier (died)

3. J.D.Vincent (died)

4. J.D.Josephine (died)

5. J.D.Irudayaraj (died)

6. J.D.Margret Mary

7. J.D.Alphonsa Mary ... Respondents/Defendants

8. V.F.Soundarajan ...Proposed respondent/Proposed defendant

I.A.No.6/ 2025 in O.S.No.158/2024

T.R.Subramanian

...Petitioner/Plaintiff

/vs/

1. J.D.Philamen Raj (died)

2. J.D.Xavier (died)

3. J.D.Vincent (died)

4. J.D.Josephine (died)
5. J.D.Irudayaraj (died)
6. J.D.Margret Mary
7. J.D.Alphonsa Mary ... Respondents/Defendants
8. Priya Xavier
9. Christoper Xavier
10. John Gabriel
11. Minor.Trinity Gabriel
12. Minor.Miracle Gabriel ... Proposed respondents/Proposed Defendants

I.A.No.7/ 2025 in O.S.No.158/2024

T.R.Subramanian ...Petitioner/Plaintiff

/vs/

1. J.D.Philamen Raj (died)
2. J.D.Xavier (died)
3. J.D.Vincent (died)
4. J.D.Josephine (died)
5. J.D.Irudayaraj (died)
6. J.D.Margret Mary
7. J.D.Alphonsa Mary ... Respondents/Defendants
8. Philomina
9. Immanuel Arasi ... Proposed respondents/Proposed Defendants

I.A.No.8/ 2025 in O.S.No.158/2024

T.R.Subramanian ...Petitioner/Plaintiff

/vs/

1. J.D.Philamen Raj (died)
2. J.D.Xavier (died)
3. J.D.Vincent (died)
4. J.D.Josephine (died)
5. J.D.Irudayaraj (died)
6. J.D.Margret Mary
7. J.D.Alphonsa Mary ... Respondents/Defendants
8. Julie Carolin ... Proposed respondent/Proposed Defendant

I.A.No.9/ 2025 in O.S.No.158/2024

T.R.Subramanian ...Petitioner/Plaintiff

/vs/

1. J.D.Philamen Raj (died)
2. J.D.Xavier (died)
3. J.D.Vincent (died)
4. J.D.Josephine (died)
5. J.D.Irudayaraj (died)
6. J.D.Margret Mary
7. J.D.Alphonsa Mary ... Respondents/Defendants
8. Mary Rajam Irudayaraj
9. I.Immagulate Mary
10. I.Victoria ... Proposed respondents/Proposed Defendants

These five petitions came up before me on 04.07.2025 for final hearing in the presence of Advocate Thiru.B.Arumugam appearing for the Petitioner in all petitions and Advocate Thiru.Yuvaraj appearing for R6 &

R7 in all petitions and Advocate Thiru.C.S.K.Sathish appearing for proposed parties in four petitions and Thiru.N.Srinivasulu appearing for proposed parties in I.A.9/2025 and after hearing both sides arguments, upon perusing the entire case records and the case having stood over for consideration till this day, this court delivered the following

COMMON ORDER

I.A.No.05/2025

The petitioner is the plaintiff filed this petition under section 5 of Limitation Act to condone the delay of 3541 days in filing the LR application.

I.A.No.06/2025

The petitioner is the plaintiff filed this petition under section 5 of Limitation Act to condone the delay of 6585 days in filing the LR application.

I.A.No.07/2025

The petitioner is the plaintiff filed this petition under section 5 of Limitation Act to condone the delay of 2971 days in filing the LR application.

I.A.No.08/2025

The petitioner is the plaintiff filed this petition under section 5 of Limitation Act to condone the delay of 8214 days in filing the LR application.

I.A.No.09/2025

The petitioner is the plaintiff filed this petition under section 5 of Limitation Act to condone the delay of 235 days in filing the LR application.

2. Brief of Common averments of petition runs as follows:-

The petitioner is the plaintiff filed the above suit for specific performance and other reliefs against the respondents/defendants. During the pendency of the suit, the 1st respondent/1st defendant died on 24.11.2014. Hence, it is necessary to implead the proposed 8th respondent as LR's of deceased 1st respondent/1st defendant. During the pendency of the suit, the 2nd respondent/2nd defendant died on 26.07.2006. Hence, it is necessary to implead the proposed 8th to 12th respondents as LR's of deceased 2nd respondent/2nd defendant. During the pendency of the suit, the 3rd respondent/3rd defendant died on 17.06.2016. Hence, it is necessary to implead the proposed 8th & 9th respondents as LR's of deceased 3rd respondent/3rd defendant. During the pendency of the suit, the 4th respondent/4th defendant died on 08.02.2002. Hence, it is necessary to implead the proposed 8th respondent as LR's of deceased 4th respondent/4th defendant. During the pendency of the suit, the 5th respondent/5th defendant died on 14.12.2023. Hence, it is necessary to implead the proposed 8th to 10th respondents as LR's of deceased 5th respondent/5th defendant. Unless the delay is condoned he will be put to great loss and hardship.

3. Brief of common averments of counter filed by R6 & R7 in I.A.No. 5/2025 runs as follows:

The petitioner has filed these petitions to condone the delay in filing the set-aside the abatement caused in the suit to bring the proposed respondents as legal representatives of the deceased defendants. All the petitions are purely an abuse of process of law and are liable to be dismissed as not maintainable. The petitioner has filed the above suit for the relief of specific performance based on the execution of sale deed. On the basis of an agreement of sale dt: 07.01.2011 alleged to have been executed by the deceased 1st defendant and the suit has been filed on 10.08.2015. Even prior to the date of filing of the suit, the 1st defendant died on 24.11.2014, 2nd defendant died on 26.07.2006 & 4th defendant died on 08.02.2002 respectively and having complete knowledge about the death of the 1st, 2nd & 4th defendants but the petitioner has filed the above suit in the year 2015. Originally the suit was presented before the Hon'ble Principal District Court, Vellore against the 1st defendant who was not at all alive on the date of presentation of the suit and the same was returned as other legal representatives of Late.Anthony Mary were not impleaded and subsequently the other defendants 2 to 7 were impleaded in the suit. But the addresses mentioned in the suit of the defendants are all fake address. The petitioner suppressed the fact that the defendants 1,2 & 4 were not alive on the date of issue of summons also. The suit filed against the dead person cannot be cured by subsequently bringing the legal representatives on record and a suit filed against a dead person is considered as nullity and from the outset, cannot be rectified. The suit is considered the defect cannot be considered a

formal defect and the petitioner cannot simply amend the suit to include the legal representatives of the deceased defendants. The rule prescribed under order 22 Rule 4 of CPC is only applicable if the death of the defendants occurs during the pendency of the suit and it cannot be used to rectify a situation where a suit filed against a deceased person in the first place. Hence, the petitions have to be dismissed.

4. Brief of common averments of counter filed by the 8th proposed respondent in I.A.5/2025 to 8/2025 runs as follows:-

The petitioner is the plaintiff filed the above suit before the II Additional District & Sessions Court, Ranipet in O.S.47/2015 and the same was decreed against the predecessors in interest to specifically perform their obligation under a purported sale agreement dt: 07.01.2011. The said sale agreement has been forged by the petitioner. Even before filing the present suit, the defendants 1, 2 and 4 were died on 24.11.2014, 26.07.2006 & 08.02.2002 respectively. The petitioner suppressed the above said facts by furnishing fake address of the original defendants in O.S.No.47/2015 and also resorting to fraud and impersonation mislead this Hon'ble court to pass ex-parte decree in the present suit on 17.12.2015. The petitioner played fraud to get an ex-parte order in E.P.66/2016 against the defendants in the present suit. The petitioner misled this Hon'ble court on 23.08.2017 to execute a sale deed for the suit property in his favour. The above said facts came to the knowledge of the present respondents in the year 2019. Immediately they have filed the suit in O.S.No.65/2019 before the II Additional District & Sessions Court, Ranipet against the petitioner praying inter alia to declare the judgment and decree dt: 17.12.2015 passed in

O.S.47/2015 is nullity and non-est in law and not binding upon the plaintiff and also to declare the sale deed dt: 23.08.2017 executed by this Hon'ble court in favour of the petitioner to be void. The suit is pending at the advance stage of the trial. This respondent gave a compliant to the Hon'ble High Court of Madras regarding the above fraudulent conduct of the petitioner in obtaining a decree against them in O.S.No.47/2015. The Hon'ble High court had conducted a detail enquiry in the said complaint and concluded that "The ex-parte decree itself was obtained by playing fraud on the court with connivance of the then Bailiff, Since he has retired long back, no purpose will be served by initiating departmental proceeding".

5. The defendants 5 to 7 are the original defendants in O.S.47/2015 had filed I.A.1/2022 in O.S.47/2015 to condone the delay of 1416 days to set aside the exparte decree dt: 17.12.2015 before the II Additional District Court, Ranipet and the same was allowed on 07.09.2023 upon appreciating the documents and comparing the admitted signatures of 5th defendant with the signature in Ex.P6 & Ex.P9 and gave a categorical finding that his signature in suit summons and notice in execution proceeding were forged and that exparte decree has been obtained by the petitioner by resorting to fraud. The petitioner challenged the above order before Hon'ble High Court of Madras in CRP No.4840/2023 and the same was dismissed on 26.02.2024 by considering the serious misconduct of the petitioner. The suit filed against the dead person 1 to 3 defendants by the petitioner by operation of law has abated. The petitioner contesting the said suit right from the beginning. The petitioner filed this petition which is not only hopeless barred by limitation, but also amounts to further abuse of process of law by

the petitioner to sustain with himself the fruits of the fraud illegally and unjustly reaped by him. There is no bonafide reason stated by the petitioner in the affidavit. It is true that abatement of suit occurs immediately on the death of the litigant. The person interested proceed further with proceedings has to first file a petition to set aside the abatement. Only upon same being allowed by this court, a petition to bring legal representatives on records could be processed. The suit originally filed is substantially against the dead persons. Hence, the institution of the suit is nullity. The petitioner has not explained huge delay in filing the present applications. As a matter of fact, there is no whisper in this regard in the cryptic affidavit under reply. Hence, the petitions have to be dismissed with heavy costs.

6. Brief of counter filed by the 10th proposed respondent and adopted by 8th & 9th proposed respondents in I.A.9/2025 runs as follows:-

The petitioner filed this petition seeking for impleading the respondents 8 to 10 in the main suit is not maintainable in the eye of law since originally the suit was filed against the dead persons and hence numbering the suit itself is improper and not maintainable. The 5th defendant died on 14.12.2023 and these respondents were brought on record by setting aside the exparte decree in I.A.No.2/2023 in O.S.47/2015 (new No.158/2024). The suit summons as well as the summons in the E.P were not served upon the deceased J.D.Irudayaraj and he did not receive any summons from this court and the same was proved in I.A.1/2022. Further, the signature of the defendants 1,2 & 4 were fabricated and in fact they were not alive at the time of filing of the suit. During the pendency of the suit, the 3rd defendant also died. The petitioner has filed the suit against the dead

persons and thereby obtained decree against the dead persons and it is nullity. The defendants 1,2 & 4 were died before filing of the suit itself hence their legal representatives cannot be brought on record and such defect does not fall within the category of a formal defect. The alleged sale agreement dt; 07.01.2011 claimed to be executed by J.D.Philamen Raj was not alive at the time of filing of the suit. The petitioner has played fraud upon this Hon'ble court by furnishing false documents and concocted averments and also abused the process of law. The suit is barred by limitation. There is no cause of action for the suit. Hence, the petition has to be dismissed with costs.

7. **The Point for consideration:**

1) Whether the petitions have to be allowed or not?

8. The petitioner is the plaintiff filed the above petitions to condone the delay in filing the petition u/o 22 R 4 of CPC. The petitioner's side argued that he was not aware of the death of the defendants 1,2 & 4 in the year 2014, 2006 & 2002. As he was unaware of the death of the said defendants he has filed the present petitions and it was not brought to the knowledge of this court by inadvertence. The 3rd defendant died in the year 2016 and the 5th defendant died in the year 2023. After gaining knowledge about the death of D3 & D5 he has filed the suitable petitions to bring the LR's of the deceased. The delay in filing the above petitions to bring the LR's of the deceased is neither wilful nor wanton. If the suit has been filed against the dead person the same can be cured by filing necessary LR

petitions. Unless, the delay is condoned he will be put to great loss and hardship.

9. By way of reply, the respondents 6 & 7 side argued that the above petitions are not maintainable either in law or on facts. The petitioner filed the suit for specific performance based on a sale agreement dt; 07.01.2011. After gaining knowledge about the death of the defendants 1,2 & 4 the petitioner filed the suit on 10.08.2015. The petitioner mentioned fake addresses of the defendants and filed the present suit. The suit was filed against the dead person cannot be cured by subsequently bringing the legal heirs on record. Actually it is considered as nullity therefore it cannot be rectified. A petition under order 22 Rule 4 of C.P.C can be filed only if the defendant died during the pendency of the suit. But in the case on hand, the defendants 1,2 & 4 were died before filing the suit itself. Therefore, the present petitions are liable to be dismissed.

10. The proposed respondents namely the 8th to 10th respondents' side argued that the petitioner was well aware of the death of the deceased defendants and deliberately filed a suit and obtained a decree fraudulently in connivance of the then bailiff. Based on the fraudulent decree he filed a E.P 66/2016 against the defendants and obtained a favourable order in his favour and obtained a sale deed in his favour in the year 2019 itself. Per se, the decree obtained by the petitioner is nullity and non-est in law and not binding on the defendants. The respondents had also given a complaint before the Hon'ble High Court of Madras, in which the Hon'ble High Court conducted a detailed enquiry and sent its conclusion to this court. In the said report it is mentioned that the ex-parte decree itself was obtained by playing

fraud on the court in connivance of the then Bailiff. Since he has retired long back no purpose will be served by initiating departmental proceedings. The surviving legal heirs of D5 filed I.A. to condone the delay of 1416 days to set-aside the ex-parte decree and the same was allowed on 07.09.2023. Originally, the summons issued either in the suit or in the E.P were received by the LR's of the deceased. The petitioner was diligent enough he could have filed the similar type of petition in the year 2019 itself. But, deliberately filed these petitions after a long delay which cannot be accepted by this court. If the present petitions is allowed the respondents/proposed defendants will be seriously prejudiced.

11. In support of his contentions, the Learned counsel for the proposed respondents 8 to 10 cited a case law reported in 1994 AIR 853 S.P.Chengalvaraya Naidu /vs/ Jagannath

In this case, the Hon'ble High Court has held that "The principle of this decision governs the instant case. At the worst the plaintiff is guilty of fraud in having falsely alleged, at the time when he filed the suit for partition, he had subsisting interest in the property though he had already executed Ex.B15. Even so, that would not amount to extrinsic fraud because that is a matter which could well have been traversed and established to be false by the appellant by adducing the necessary evidence. The preliminary decree in the partition suit necessarily involves an adjudication though impliedly that the plaintiff has a subsisting interest in the property". The facts of the present case no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage

of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. A litigant, who approached the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

12. After hearing the arguments of both sides, the petitioner is the plaintiff originally filed O.S.47/2015 for specific performance against the defendants 1 to 7 in the year 2015. while filing the original suit, the defendants 1,2 & 4 were not alive and they died on 24.11.2014, 26.07.2006 & 08.02.2002. I.A.05/2025 has been filed to condone the delay of 3541 days in filing the petition to set-aside the abatement of the deceased D1 who died on 24.11.2014. I.A.06/2025 has been filed to condone the delay of 6585 days in filing the petition to set-aside the abatement of the deceased D2 who died on 26.07.2006. I.A.07/2025 has been filed to condone the delay of 2971 days in filing the petition to set-aside the abatement of the deceased D3 who died on 17.06.2016. I.A.08/2025 has been filed to condone the delay of 8214 days in filing the petition to set-aside the abatement of the deceased D4 who died on 08.02.2002. I.A.09/2025 has been filed to condone the delay of 235 days in filing the petition to set-aside the abatement of the deceased D5 who died on 14.12.2023.

13. The petitioner/plaintiff side contended that he was not aware of the death of the deceased defendants within the time stipulated under the act, hence he could not file the necessary petitions before this court. He has gained knowledge about the death of the deceased only recently hence,

immediately he has filed the present petitions on 02.01.2025. The petitioner's side filed their written arguments either in oral arguments or in their written arguments nowhere he has stated about the date of knowledge. The respondents 6, 7 & 8 to 10 have vehemently opposed the above petitions and argued that the petitioner was well aware of the death of the deceased persons even before filing the suit. There is no dispute between the parties about the date of filing of the suit on 10.08.2015. The 1st defendant died on 24.11.2014, 2nd defendant died on 26.07.2006, 4th defendant died on 08.02.2002 itself. The D3 died on 17.06.2016 & D5 died on 14.12.2023. The R6 & R7 side argued that the petition can be filed to bring the LR's of the deceased if the defendants died during the pendency of the suit as per order 22 Rule 4(A) of CPC. But in the case on hand, admittedly the defendants 1,2 & 4 died much before filing the suit. As per order 22 Rule 4(A) of CPC D3, & D5 died after the disposal of the suit. Even assuming without admitting it to be true that the petitioner was unaware of the death of the deceased defendants 1 to 5 he could have very well filed necessary petition in the E.P by impleading the LR's of the deceased defendants. Knowing fully well about the death of the deceased, the petitioner filed the execution petition in E.P.No.66/2016 and obtained an ex-parte order in his favour and got the sale deed executed in his name and E.P was terminated on 16.09.2017. The E.P notice also served on the dead persons. The petitioner has not given any explanation in his counter as to how the summons in the O.S and notice in the E.P were served on the dead persons. No doubt, while entertaining petitions to set-aside the abatement the court has to follow a liberal approach provided sufficient cause must be set out in the petition. The petitioner has given a reason that as he was not aware of the death of the defendants the

delay has been occurred and it is a curable defect. The respondents' side strongly opposed the above petitions and argued that the petitioner deliberately suppressed the material fact before the trial court as well as in the E.P stage and obtained an order in his favour would go to show that the petitioner has not approached this court with a bonafide intention.

14. The respondents 8 to 10 who are the proposed defendants of the deceased D1 have filed a suit in O.S.No.33/2024 to set-aside the decree obtained by the petitioner/plaintiff by playing fraud and also declare it as null and void. The said suit was posted for defendants' side arguments. The very same proposed parties have filed O.S.87/2024 for partition against the petitioner/plaintiff and the same is posted for arguments.

15. While perusing the material records, it has been brought it to the knowledge of this court that the respondents already approached the Registry of Hon'ble High court of Madras about the service of summons in the O.S and the E.P and to take appropriate action against the Bailiff. The D5 filed I.A.1/2022 to condone the delay 1416 days in filing the petition to set-aside the ex-parte decree dt; 17.12.2015. On merits, it was allowed on 07.09.2023. Thereafter the petitioner/plaintiff preferred a C.R.P.No. 4840/2023 before the Hon'ble High court of Madras and the same was dismissed on 26.02.2024. In the said order the Hon'ble High court of Madras in Para 10 has clearly discussed about the service of summons in O.S as well as in the E.P and also the addresses furnished by the petitioner in the said petitions. Further more, the Hon'ble High court of Madras has observed that the signatures of the respondents were forged in the summons and notice which were issued in connection with the suit proceedings as well

as the execution proceedings mentioning the fake addresses as if the said summons and notices were duly served on them. It has also been discussed about the enquiry finding given by the Hon'ble High court of Madras and the relevant portion of the same is extracted as "the ex-parte decree itself was obtained by playing fraud on the court with connivance of the then Bailiff, Since he has retired long back, no purpose will be served by initiating departmental proceeding". Thus it is clear that the ex-parte decree obtained by the petitioner/plaintiff playing fraud on the court polluting the administration of justice and finally dismissed the Civil Revision Petition filed by the petitioner/plaintiff. As against the said order, the petitioner/plaintiff has not filed any Appeal thereby the order passed by the Hon'ble High court of Madras has become final. Under Section 5 of Limitation Act the reasons assigned by the petitioner/plaintiff must be convincing and it has to be accepted by the court. In the case on hand, the petitioner/plaintiff had initiated two proceedings by way of filing a suit and E.P. While filing the C.R.P. alone the LRs of the deceased were impleaded would go to show that the petitioner/plaintiff has not approached this court with clean hands. The petitioner/plaintiff has stated that during the pendency of the suit the defendants 1, 2, 3, 4 and 5 were died itself is wrong. The respondents have also alleged that the petitioner had forged the signatures of the defendants in the suit summons and in the E.P notice. It has been reiterated in the C.R.P.No.4840/2023 by the Hon'ble High Court of Madras. The petitioner's contention cannot be accepted for the simple reason that the proposed respondents 8 to 10 filed a separate suit in O.S.No.65/2019. While so, he could have filed a similar petition to bring the LRs of the deceased immediately after coming to know about the death of the deceased.

Admittedly the E.P was disposed on 16.09.2017. Till December 2024, the petitioner/plaintiff remained silent without taking any steps to bring LR's of the deceased defendants. Further more, the petitioner/plaintiff has not given any valid reason with regard to the inordinate delay mentioned in the petitions. The suit itself is abated as against D1, D2, D3 and D4. Therefore, in view of the above discussion, the points are answered as against the petitioner/plaintiff except I.A.No.09/2025. Accordingly the I.A.No.05/2025, 06/2025, 07/2025 and 08/2025 are liable to be dismissed. Since the length of delay in I.A.No.09/2025 is minimal this court is inclined to allow that I.A.alone.

In the result, I.A.05/2025 is dismissed, I.A.06/2025 is dismissed, I.A.07/2025 is dismissed & I.A.08/2025 is dismissed. I.A.09/2025 is allowed.

I.A.05/2025

In the result, this petition is dismissed with costs.

I.A.06/2025

In the result, this petition is dismissed with costs.

I.A.07/2025

In the result, this petition is dismissed with costs.

I.A.08/2025

In the result, this petition is dismissed with costs.

I.A.09/2025

In the result, this petition is allowed.

Dictated by me to the Steno-Typist, typed by her directly in computer and print taken out, corrected and pronounced by me in open court, this the 15th day of July 2025.

(Sd/-)K.S.Jayamangalam,

II Additional District & Sessions Judge,

Arakkonam.

Both sides witness and exhibits: Nil.

(Sd/-)K.S.Jayamangalam,

II Additional District & Sessions Judge,

Arakkonam.