

IN THE COURT OF THE III ADDITIONAL DISTRICT COURT, SALEM.
Present: Tmt. L.Kalaivani, BA.,B.L.,
III Additional District Judge, Salem.

Tuesday, the 11th day of March 2024

I.A.No.2/2024
in
O.S.No.52/2023

Ponnaiyan ... Petitioner/Plaintiff

/Vs/

Ponnusamy(Died) ... Respondent/Defendant

P.Velmurugan

P.Sivasakthi

... Proposed parties

This petition is coming on 26.02.2025 before me for final hearing in the presence of Tmt.J.K.Raajeswari, learned counsel for the petitioner and Thiru.C.Jayaprakasham, learned counsel for the Respondents/proposed parties, upon hearing both their arguments and having stood for consideration till date this court delivered the following:-

ORDER

This petition has been filed by the petitioner Under Order 22 Rule 9 of CPC to set aside the abatement.

1. Brief case of the petitioner is as follows:-

The petitioner herein is the plaintiff in the suit and suit has been filed by the petitioner seeking in the relief of recovery of money. During the pendency of the suit, the defendant was died on 19.10.2023 leaving behind the proposed parties. The petitioner has filed a petition in IA.No.1/2023

seeking attachment before judgment and said petition was dismissed after hearing both. However, the defendant has taken a stand that he does not have any proposal to sell the petition mentioned property. Nevertheless, after the demise of the defendant, the proposed parties were created settlement deed in between them on 01.12.2023 and they have well known about the order passed by this court in IA.No.1/2023. Hence, the present petition to set aside the abatement order.

2.Nutshell of the counter filed by the 2nd respondent/ 1st proposed party and adopted by the 3rd respondent/ 2nd proposed party is as follows:-

Denied and decried all averments made in the petition and affidavit except those are specifically admitted. It is true that during the pendency of the suit the defendant was died on 19.10.2023 leaving behind the proposed parties as his legal heirs. But, it is not correct to state in IA.No.1/2023 was dismissed by this court based on the stand taken by the respondent that he does not have any proposal to sell the petition mentioned property. In fact, the petition was dismissed on merits by holding that the petitioner had not satisfied the court for attachment of property before judgment. Therefore, the petitioner has no right to question the settlement deed in document No.9012/2023. Hence, it is prayed for dismissal.

3. Point for consideration is:

Whether this petition is liable to be allowed or not?

4. Answer to the Point:-

Ongoing through the rival submission on either side it could be seen that the defendant was died on 19.10.2023 leaving behind the proposed parties during the pending of the suit and the proposed defendants are to be added as legal representative of the defendant in order to proceed with the case. The respondents filed their counter and they would contend that there is a delay in filing the present petition and the petitioner has not taken steps

even after knowing the factum of death of the defendant. This court has taken note of the objections of the respondents. However, the reason given by the petitioner for the delay is convincing. For the reason stated above and in the interest of justice the present petition deserves to be allowed.

In the result, this petition is allowed. No cost.

Dictated by me, to the Steno Typist, transcribed and computerized by her, corrected by me and pronounced in the open court, on this 11th day of March 2025.

(Sd/-L.Kalaivani)
III Additional District Judge,
Salem.

Fair/Draft Order in
I.A.No.2/2024 in
O.S.No.52/2023
Dt. 11.03.2025
III ADJ.,Salem.