

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, ATTUR

PRESENT : **Tmt. D. JANSIRANI, MBA., LL.M.,**
ADDITIONAL DISTRICT MUNSIF, ATTUR.

Wednesday, 11th day of June 2025

I.A. No. 3/2024 in O.S. No. 178/2004

CNR No. TNSA13-000092-2004

1. A.Subramanian (died)
2. Tamilarasi
3. Bharath Gowtham . . . Petitioners/Plaintiffs

/Versus/

1. Selvalakshmi
2. Bagyam
3. Usharani
4. Indrani @ Indira Gandhi
5. Sellamuthi Ammal (Died)
6. Meenakshi Ammal (Died)
7. Parvathi Ammal
8. Palanimuthu
9. Muthukumarasami (Died)
10. Thailammal (Died)
11. Natesan
12. Natarajan
13. Sellam
14. Sivamalai
15. Sellammal
16. Sekar
17. Baskar . . . Respondents/Defendants

This petition is came up for final hearing before me on 04.06.2025 in the presence of Thiru.P.Gobi, Advocate for the Petitioners/Plaintiffs and Thiru.T.Subbarayan, Advocate for the Respondents 1 to 3 /Defendants 1 to 3 and Thiru.M.Senthilkumar, Advocate for the R4 and R7, R8, R11 to R17 called absent set exparte upon hearing the arguments on either side, and upon perusing the materials records, and having stood over till this day for consideration, this date, this court delivers the following,

ORDER

The Petitioners/Plaintiffs has filed this petition under Order. 22, Rule 4 of CPC praying to exempt the plaintiffs from the necessity of substituting the legal representatives of the deceased Defendants No.11 to 15 in the above suit.

2. Brief averments made in the petition :

The Petitioner / Plaintiff has stated that, she is the 2nd Petitioner herein and 2nd Plaintiff. she submits that deceased husband 1st Plaintiff had filed this suit. During the pendency of the suit, her husband 1st Plaintiff passed away on 24.02.2015 and the 2nd Plaintiff (wife) and 3rd Plaintiff (son) had taken steps to get impleaded in the above suit. She states that several years after the filing of the above suit, the 4th Respondent/4th Defendant had filed petition seeking to amend the Plaint in all the places where her name reflects Indrani as Indirani @ Indira Gandhi, she submits that the above Application was allowed by this Hon'ble court. Thereafter they took steps to amend the Plaint and accordingly and got the Plaint amended and also filed the Amended Plaint Copy before this Hon'ble Court. She states after carrying out the amendment this Hon'ble Court was pleased to proceed in this case and posted the case for cross of PW2. She states that on 30.11.2023, the Respondent/Defendant Counsel served a copy of a

memo dated 30.11.2023 stating that Defendants 11 to 15 passed away. However, for the reasons best known to them, they had chosen not to file the said memo before this Court. She states that thereafter, during the cross-examination of PW2 on the same day the Defendant Counsel had specifically put a question insofar as the death of Defendants 11 to 15 are concerned and the relevant portion of the cross-examination of PW2 is extracted hereunder

நாகியம்பட்டி கிராமத்தில் வசிக்கும் கந்தசாமி பண்டாரம் மகன் நடேசன், அவரது மற்றொரு மகன்கள் நடராஜன், மகள்களான செல்லம், சிவமாலை ஆகிய நாலு பேரும் இறந்துவிட்டதால், ஒரு மகன் மட்டும் உயிருடன் இருக்கிறார். யார் என்று எனக்கு சரியாக தெரியவில்லை. அதேபோல வழக்கின் 15-வது பிரதிவாதி இறந்துவிட்டார் என்றால், ஆமாம். இன்றைய தேதிவரையிலும் 11 முதல் 15 பிரதிவாதிகள் இறந்தது சம்மந்தமாக மேல்நடவடிக்கை எதுவும் எடுக்கவில்லை என்றால் நடவடிக்கை எடுத்துவிடுகிறோம்.

She states that on the basis of the above-mentioned facts and circumstances, this petition has been filed. Originally this suit was filed in the year 1975 and Defendants 11 to 15 were set ex-parte in the above suit and had not filed any Written Statement in the above suit and not appeared and contested the suit. Since D11 to D15 were set ex-parte there will be no abatement in the given set of facts and circumstances as well. Hence this petition.

2. **Brief averments made in the counter**

(COUNTER FILED BY THE SECOND RESPONDENT AND ADOPTED BY THE RESPONDENTS 1 AND 3)

The respondent / Defendant objected the petition that this petition is not maintainable and the averments stated in the affidavit are false and denied. This petition cannot be entertained, since instead of impleading the

legal heirs of the deceased defendants 11 to 15, it is prayed for exempting the plaintiffs, from the necessity of substituting the legal representatives of the deceased defendants 11 to 15 in this suit. There is no strong ground and valid reason stated in this petition for exempting the plaintiffs from the necessity of substituting the legal representatives of the said deceased defendants. If this petition is allowed, it will lead to multiplicity of proceedings, due to non joinder of the necessary and proper parties, who are the legal heirs of the deceased defendants 11 to 15.

The respondents/defendants further state that, the petitioners/plaintiffs are bound to take necessary steps to implead the legal heirs of the defendants 11 to 15. The averments stated in para 5 to 7 in the affidavit are not applicable to this case regarding the defendants 11 to 15. The petitioners/Plaintiffs ought to have filed the necessary petition for amending the plaint instead of filing this petition which is meant for impleading the legal heirs of the deceased defendants 11 to 15, who died during the pendency of this suit. There is no long cause title, mentioned in this petition and hence this petition is liable to be dismissed in limini.

3. Now the point for consideration is Whether the petitioners/plaintiffs are entitled to get the relief prayed in the petition?

4. Both side argument heard. The petition, counter and records are carefully perused. On perusal of records this court finds that originally the suit was filed the year of 1975 and D11 to D17 was set exparte in very long back it self. They have not even filed their written statement. During trial on 13.11.2023 while cross examine pw2 the defendants asked Pw2 about the death of D11 to D15 . On the basis of the deposition of Pw2 the petitioner/Plaintiffs filed this petition to exempt the plaintiffs from substituting the legal representatives of D11 to D15 who were failed to file a written statement.

As per O.22 R.4 of CPC ,

"The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place."

Hence the petitioners/plaintiffs are not necessary to take steps to implead the legal representative of the deceased D11 to D15 who were already set exparte.

In the result,

This petition is allowed, without cost.

This order is dictated to the Steno typist directly, typed by her, corrected and pronounced by me in the open court on this the 11th day of June 2025.

**Additional District Munsif
Attur**

List of Documents and Witnesses on Both side:

Nil.

**Additional District Munsif
Attur**

A.D.M. Court, Attur.
DRAFT / FAIR ORDER
I.A. No. 3/2024 in O.S. No. 178/2004
Dated : 11.06.2025