

IN THE COURT OF DISTRICT MUNSIF, METTUR, SALEM DISTRICTPresent: **Thiru. M.Selvam, B.A., B.L.,**

District Munsif, Mettur

Thursday, this the 19th day of June 2025**E.A.No. 04 of 2024****in****E.P. No. 09 of 2021****in****O.S.No. 08 of 2011**

(CNR No. TNSA17-000122-2021)

1. Dharmalingam

2. Umasaravanan

... Petitioners/Decree Holders

/Versus/

1. Palanisamy (Died)

2. Srinivasan (Died)

3. Vijayakumar

... Respondents/Judgment Debtors

4. Maju @ Muthulakshmi

... Respondent/Proposed LR

This petition came up before me in the presence of the learned counsel Mr. S. Mohanram., M.A., B.L., appearing for Petitioners/Decree Holders and learned counsel Dr. B. Balamurugan., M.A., M.L., appearing for Respondents/Judgment Debtors and the proposed respondent. This petition is heard on 12.06.2025 along with the connected applications in E.A.No. 5 and 6 of 2024, but however posted as only for enquiry. Since, the enquiry in this petition is already heard and the issue is also pertaining to the matter in consonance with the connected application in E.A.No. 5 and 6 of 2024, which was also posted for orders today, this petition is also disposed today on merits. Upon hearing both sides arguments and after stood over for my consideration till this day, this court passed the following:-

ORDER

This petition is filed by the petitioners/decree holders under section 50 and 151 of CPC to implead the proposed legal heirs of the deceased 1st respondent in the execution proceedings.

1. Brief averments in the petition filed by the petitioners is as follows:

1.1. The petitioners are the decree holders in the execution proceedings. During the pendency of the proceedings, the respondents/judgment debtors had filed a memo stating that the 1st respondent is died on 06.01.2024. The respondents 2 and 3 are the sons of the 1st respondent and the proposed legal heir is the daughter of the deceased 1st respondent. Hence, this petition is filed to implead the proposed legal heir.

2. Brief facts in the counter filed by the 3rd respondent and adopted by the 4th respondent is as follows:

2.1. The respondents denied the averments made by the petitioners in their petition. The legal heirs of the deceased 2nd respondent, who were his wife and daughters were not added as a parties in this petition. Since, they were also the legal heirs of the deceased 1st respondent, they have to be added as a parties to this petition. Hence, this petition is not maintainable and liable to be dismissed.

3. No oral and documentary evidence on either side.

4. Points for Consideration:

(i) Whether this petition has to be allowed or not ?

5. Discussion:

5.1. Both side rival submissions heard with regard to their pleadings and perused the materials on record. The original suit is filed by the petitioners/de decree holders for the relief of declaration, to declare that the suit property belongs to them and to declare the sale deed dated 17.12.1983 in document no. 1470/1983 in favour of the respondents 1 to 3 herein as null and void and for recovery of possession and for the relief of mandatory injunction. The same was decreed by this court on 10.10.2014 and the appeal preferred by the respondents 1 to 3 in A.S.No. 50 of 2014 on the file of Hon'ble Sub Court, Mettur was also disposed on

28.09.2018 by confirming the judgment passed by the trial court. There was no materials on record produced by the respondents to show that they had preferred any second appeal as against the same.

5.2. On perusal of the case records, it shows that after the disposal of the appeal in A.S.No. 50 of 2014, the 2nd respondent was died on 21.11.2020 and this execution proceedings is filed without impleading any of his legal representatives. Thereafter, the 1st respondent is died on 06.01.2024 and this petition is filed to implead his legal representatives, who were his sons, the 2nd and 3rd respondent, who were already parties to this proceedings and his daughter, the 3rd respondent herein.

5.3. In the mean time, the petitioners had also filed an application in E.A. No. 5 of 2024 to implead the legal representatives of the deceased 2nd respondent, who were his wife named Soundammal and his minor daughters namely Veeralakshmi and Harinipriya along with an application in E.A.No. 6 of 2024 to appoint their mother named Soundammal as their Guardian or to appoint a Court Guardian.

5.4. The learned counsel for the respondents had submitted that the petitioners had failed to implead all the legal heirs of the deceased 1st respondent and had left out the wife and daughters of the pre-deceased son of the 1st respondent, who is the deceased 2nd respondent herein. As already discussed above, the petitioners themselves had filed an application to implead the legal representatives of the deceased 2nd respondent, who were his wife named Soundammal and his minor daughters namely Veeralakshmi and Harinipriya in E.A.No. 5 of 2024 and to appoint their mother named Soundammal as their Guardian or to appoint a Court Guardian in E.A.No. 6 of 2024. As per the pleadings in the execution petition, it is clear that the 1st respondent is the father of the 2nd and 3rd respondent and the 2nd respondent had pre-deceased the 1st respondent. As per the schedule of the Hindu Succession act, 1956, the widow of the pre-deceased son

and the daughters of the pre-deceased son is also classified as Class – I legal heirs of a male Hindu dying intestate. Therefore, they should also be shown as proposed parties/legal representatives of the deceased 1st respondent in this petition.

5.5. But the petitioners herein had not taken any steps to implead them in this petition. The deceased 2nd respondent is alleged to have died leaving his minor daughters. Hence, the interest of the minors should also be protected and safeguarded by this court. Without adding them as a party to this petition and without hearing their objections in this regard, if this petition is decided, then certainly, the interest of the minors would be pre-judiced. Therefore, since, the above defects are curable one and that it is admitted by the either side about the legal representatives of the deceased persons, this court in the interest of justice, inclined to grant liberty to the petitioners to file an fresh application.

In the result, this petition is dismissed with liberty to the petitioners to file a fresh application in this regard with impleading all the legal heirs of the deceased 1st respondent within a period of two weeks. Considering the facts and circumstance of this case, there is no order as to cost.

This order is typed by me in my official laptop, corrected and pronounced by me in the open court on this 19th day of June 2025.

**Sd./-Thiru.M.Selvam,
District Munsif,
Mettur.**

Both side witnesses and exhibits: Nil

**Sd./-Thiru.M.Selvam,
District Munsif,
Mettur.**