

**IN THE COURT OF DISTRICT MUNSIF, METTUR, SALEM DISTRICT**

Present: **Thiru. M.Selvam, B.A., B.L.,**

District Munsif, Mettur

Thursday, this the 19<sup>th</sup> day of June 2025

**E.A.Nos. 05 and 06 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

5. Soundammal

6. Minor Veeralakshmi

7. Minor Harinipriya

Both minors were represented by their  
Guardian and mother named Soundammal,  
the 5<sup>th</sup> respondent herein

...Respondents/Proposed LR's

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 the learned counsel Dr. B. Balamurugan., M.A., M.L., appearing for Respondents/Judgment Debtors and the proposed respondents. Upon hearing both sides arguments and after stood over for my consideration till this day, this court passed the following:-

**COMMON ORDER**

These petition are filed by the petitioners/decree holders under Section 50 and 151 of CPC and Order 32 Rule 3 of CPC to implead the proposed legal heirs of the deceased 2<sup>nd</sup> respondent in the execution proceedings and to appoint the mother of

the minor respondents 6 and 7, who is the 5<sup>th</sup> respondent herein as their Guardian or a Court Guardian.

**1. Brief averments in both the petitions 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 1<sup>st</sup> respondent was died on 06.01.2024 and they had filed a petition to implead his legal heirs in E.A.No. 4 of 2024. In the counter filed by the respondents therein, they have stated that the legal heirs of the pre-deceased son, the 2<sup>nd</sup> respondent herein was not added and had also filed their legal heirship certificate. Hence, these petitions have been filed to implead their legal heirs and to appoint a Guardian to the minors.

**2. Brief facts in the counters filed by the respondents in both the petitions is as follows:**

2.1. The respondents denied the averments made by the petitioners in their petition. The decree was passed as against 4 defendants. But the petitioners had filed this execution petition only as against the defendants 1 to 3. The petitioners had not stated the fact of the wife of the 1<sup>st</sup> respondent namely One Poongodi or impleaded their legal heirs, who was died after passing of the judgment. The petitioner had also made false statement as such the deceased 2<sup>nd</sup> respondent had no legal heirs. Thereafter, the petitioners had filed their counter stating that the 2<sup>nd</sup> respondent was married and he had leaved his wife and his two daughters as his legal heirs. Then only the petitioners had filed this petition.

2.2. The 6<sup>th</sup> respondent Veeralakshmi had attained majority and was married and living with her husband. Though the same was known to the petitioners, they had suppressed the same. Hence, her mother could not act as a Guardian for the 6<sup>th</sup> respondent. The petitioners had not stated the materials facts in their petition. The petitioners had failed to disclose who is Guardian for which minors and their

relationship and whether they would act as against the interest of the minors. Hence, this petition is liable to be rejected.

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/decreed 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 2<sup>nd</sup> respondent was died on 21.11.2020 and this execution proceedings is filed without impleading any of his legal representatives. Thereafter, the 1<sup>st</sup> respondent is died on 06.01.2024 and an application in E.A.No. 4 of 2024 is filed to implead his legal representatives, who were his sons, the 2<sup>nd</sup> and 3<sup>rd</sup> respondent, who were all already parties to this proceedings and his daughter, the 4<sup>th</sup> respondent herein.

5.3. In these circumstances, these petitions are filed by the petitioners/deed holders to implead the legal representatives of the deceased 2<sup>nd</sup> respondent, who were his wife named Soundammal and his minor daughters namely Veeralakshmi and Harinipriya and to appoint their mother named Soundammal as their Guardian or to appoint a Court Guardian. In the short and long cause title of these petitions, it was shown as the 4<sup>th</sup> respondent named Maju @ Muthulakshmi is also the legal representative of the deceased 2<sup>nd</sup> respondent. The 4<sup>th</sup> respondent is the sister of the deceased 2<sup>nd</sup> respondent. Admittedly, since the wife and the daughters of the deceased 2<sup>nd</sup> respondent is alive, they would only come under the purview of Class - I - legal heirs as per the schedule of the Hindu Succession act, 1956 and his sister, the 4<sup>th</sup> respondent herein would not come under the scope of Class -I - legal heirs.

5.4. It is the contention of the respondents herein that the minor 6<sup>th</sup> respondent had attained majority and got married and was living with her husband and hence, her mother cannot play a role of Guardian to her. On perusal of the case records, it shows that the respondents herein had filed a memo on 27.09.2024 along with the death certificate and legal heirship certificate of the deceased 2<sup>nd</sup> respondent. On perusal of the same, it shows that the 2<sup>nd</sup> respondent herein was died on 03.10.2020 leaving behind his wife named Soundammal and his minor daughters namely Veeralakshmi and Harinipriya, who were aged about 13 years and 8 years respectively. The alleged legal heirship certificate was issued on 30.12.2020. Though it passed nearly 5 years therein, it is uncertain to come to a conclusion that the said Veeralakshmi, who is the 6<sup>th</sup> respondent herein had attained majority. Further, the respondents herein had also not produced any materials in this regard or to show that she had attained majority and also got married. The 5<sup>th</sup> respondent herein, who is the mother of the said Veeralakshmi and Harinipriya can certainly produce any documents in respect of the same. Though she was contesting this petition, she had not produced the same for the best reason known to her. She had also not made any statement in her counter statement that she was not intended to act as a Guardian for the minor respondents.

5.5. It is yet another contention of the respondents that the petitioners had not disclosed about the facts of the wife of the 1<sup>st</sup> respondent named Poongodi, who was died after passing of the judgment. As admitted by the respondents, the wife of the deceased 1<sup>st</sup> respondent named Poongodi was already died. But the respondents had not disclosed any particulars as about that any other surviving legal heirs of the deceased 1<sup>st</sup> respondent or his wife Poongodi was left out by the petitioners without making them as a party to the proceedings.

5.6. The respondents further contended that the petitioners in their affidavit had not at all averred the reason for appointing the guardian and the relationship of the guardian to that of the minors or whether they would act as against the interest of the minor or not. As per Order 32 Rule 3(5) of CPC (Madras High Court Amendment), 1908, an application to appoint a guardian shall be supported by an affidavit verifying the fact that the proposed guardian or no one of the proposed guardian has no interest in the matter in controversy in the proceeding adverse to that of the minor and that he is a fit person to be so appointed. But the affidavit filed by the petitioners does not contain the above averments, which is a statutory requirement and a mandatory one.

5.7. This court considers that the above defects are curable one. Further, this court had the obligation to safeguard and protect the interest of the minors in respect of the proceedings pending before it and the same could be achieved only by way of appointing a fit person as their guardian to proceed with the case on their behalf in accordance with law. Therefore, this court in the interest of justice, inclined to grant liberty to the petitioners to file an appropriate application containing the averments put forth as provided under Order 32 Rule 3(4) and (5) of CPC (Madras High Court Amendment), 1908.

**In the result, these petitions are dismissed with liberty to the petitioners to file appropriate application as provided under Order 32 Rule 3(4) and (5) of**

CPC (Madras High Court Amendment), 1908. Considering the facts and circumstance of this case, there is no order as to costs.

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

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

**Both side witnesses and exhibits: Nil**

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