



(IA.No.6/2026 & IA.No.7/2026 & IA.No.8/2026 in OS.No25/2023)

IN THE COURT OF DISTRICT MUNSIF, AUNDIPATTI.

PRESENT: Thiru. E. Suganthan, B.A., L.L.M.,

District Munsif, Aundipatti.

Monday, the 01st day of June 2026

IA. No : 6/2026 & 7/2026 & 8/2026

in

OS. No : 25/2023

CNR.TNTH140000212023

IA. No : 6/2026

1. V. Chinnadurai
2. V. Anbarasan
3. A.Vijayalakshmi

...Petitioners/Plaintiffs
...Proposed parties/ 2nd Plaintiff

..Vs..

1. Thangapandi
2. Thangakodi

... Respondents/Defendants

IA. No : 7/2026

V. Chinnadurai
V. Anbarasan
A.Vijayalakshmi

...Petitioners/Plaintiffs
...Proposed parties/ 2nd Plaintiff

..Vs..

1. Thangapandi
2. Thangakodi

... Respondents/Defendants

IA. No : 8/2026

V. Chinnadurai
V. Anbarasan
A.Vijayalakshmi

...Petitioners/Plaintiffs
...Proposed parties/ 2nd Plaintiff

..Vs..

1. Thangapandi
2. Thangakodi

... Respondents/Defendants



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This Petition came up on 27.04.2026 before this court for final hearing in the presence of Mr.M.Muthu, Advocate for the Petitioners and Advocate Mr.V.Alagirisamy for the Respondents and Upon hearing the arguments on both the sides and having stood over till this day for my consideration, this court delivers the following...

ORDER

These petitions are filed as follows:

(i) I.A. No. 6/2026 is filed under Section 5 of the Limitation Act to condone the delay of 774 days in filing the petition to set aside the abatement caused due to the death of the 2nd Plaintiff;

(ii) I.A. No. 7/2026 is filed under Order 22 Rule 9(2) of CPC to set aside the abatement against the deceased 2nd Plaintiff; and

(iii) I.A. No. 8/2026 is filed under Order 22 Rule 3 of CPC to implead the 3rd Petitioner, namely Vijayalakshmi, wife of the deceased 2nd Plaintiff, as Plaintiff No.3 in the suit.

These three interlocutory applications are taken up together for consideration as they arise out of the same set of facts and are interconnected in nature.

2. The brief averments of the petitioners are that the suit has been filed by the plaintiffs for declaration of title and consequential injunction in respect of the suit property. During the pendency of the suit, the 2nd Plaintiff namely Anbarasan died on 09.05.2023. According to the petitioners, on account of the sudden demise of the 2nd Plaintiff, the petitioner/wife of the deceased was put under severe mental trauma and family hardship and therefore she could not take immediate steps to implead herself as legal representative of the deceased 2nd Plaintiff within the statutory period.



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Consequently, the suit stood abated as against the deceased 2nd Plaintiff. Thereafter, the petitioners have come forward with these petitions seeking condonation of delay, setting aside the abatement and impleading the legal heir of the deceased plaintiff.

3. The respondents/defendants filed counter opposing the petitions. It is their contention that the 1st Plaintiff is none other than the brother of the deceased 2nd Plaintiff and therefore he was fully aware about the death of the 2nd Plaintiff from the very beginning. It is further contended that the 1st Plaintiff was earlier conducting the case as party-in-person and hence he was fully aware of the legal procedure relating to impleading legal heirs. According to the respondents, despite such knowledge, no steps were taken within time and only after the defendants raised objections during the cross-examination of the 1st Plaintiff, the present petitions came to be filed with enormous delay. Therefore, according to the respondents, the petitioners have not shown sufficient cause for condoning the long delay of 774 days and hence the petitions are liable to be dismissed.

4. Heard the learned counsel appearing on either side and perused the materials available on record.

5. It is not in dispute that the 2nd Plaintiff died during the pendency of the suit on 09.05.2023 and that no steps were taken within the prescribed period to bring on record the legal representatives of the deceased 2nd Plaintiff. Hence, the suit stood abated against him. The present applications have been filed seeking condonation of delay and to set aside such abatement.

6. The suit is one for declaration of title and permanent injunction in respect of immovable property. In such nature of suits, the right to sue ordinarily survives to the legal representatives of the deceased party. Therefore, the lis involved in the suit cannot be decided effectively in the absence of the legal heirs of the deceased 2nd Plaintiff. Though the delay involved in the present case is considerably long, it is well



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settled that while considering applications filed under Section 5 of the Limitation Act, the Court has to adopt a liberal and justice-oriented approach, particularly when refusal to condone the delay would result in shutting out adjudication on merits.

7. The reason assigned by the petitioners for the delay is that due to the sudden demise of the 2nd Plaintiff, the petitioner/wife of the deceased was under mental stress and was unable to take timely steps. It is true that the respondents have pointed out that the 1st Plaintiff was aware of the death and had knowledge about the procedure. However, mere delay or lapse on the part of the parties by itself cannot be a ground to non-suit them, especially in matters involving rights over immovable properties, unless it is shown that the delay was deliberate, wanton or lacking in bona fides. In the present case, though negligence cannot be completely ruled out, this Court does not find any material to hold that the delay was wilful or actuated by mala fide intention.

8. Further, if the delay is not condoned and the abatement is not set aside, valuable rights claimed by the parties in respect of the suit property would remain unadjudicated on merits. On the other hand, by condoning the delay, the defendants can always be compensated by way of costs and they would still have full opportunity to contest the suit on merits. Therefore, this Court is of the view that substantial justice would be advanced by allowing these petitions rather than dismissing them on technical grounds.

9. At this juncture, this Court has also perused the Legal Heir Certificate produced by the petitioners. A perusal of the same reveals that apart from the petitioner Vijayalakshmi, the father and mother of the deceased 2nd Plaintiff are also shown as legal heirs of the deceased Anbarasan. Since the present suit is one for declaration of title over immovable property, all the legal heirs of the deceased 2nd Plaintiff may have a possible interest in the subject matter of the suit and they may



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also have a say in the adjudication of the issues involved in the suit. If only one among the legal heirs is impleaded, there is every possibility of future disputes or separate proceedings being initiated by the remaining legal heirs. Therefore, in order to ensure complete and effective adjudication of the dispute and also to avoid multiplicity of proceedings, this Court is of the considered opinion that all the legal heirs of the deceased 2nd Plaintiff are necessary and proper parties to the suit.

Considering the overall facts and circumstances of the case, this Court is inclined to allow these petitions subject to payment of costs.

In the result, the following orders are passed:

(i) I.A. No. 6/2026 is allowed on condition that the petitioners shall pay a cost of Rs.2,000/- to the respondents/defendants on or before 10.06.2026 and consequently, the delay of 774 days in filing the petition to set aside the abatement is condoned;

(ii) Consequently, I.A. No. 7/2026 is allowed and the abatement caused against the deceased 2nd Plaintiff is set aside;

(iii) I.A. No. 8/2026 is allowed and the petitioner Vijayalakshmi is impleaded as Plaintiff No.3 in the suit;

(iv) The plaintiffs are further directed to take necessary steps to implead the other legal heirs of the deceased 2nd Plaintiff, namely his father and mother, as parties to the suit within 10 days from the date of this order, failing which appropriate orders shall follow.

For compliance call on 10.06.2026.



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Typed and corrected by me directly in my Laptop, printed by steno-typist and pronounced by me in open court on 01th Day of June 2026.

**District Munsif,
Aundipatti.**

List of Petitioner side witnesses : Nil

List of Petitioner side documents: Nil

List of Respondents side witnesses: Nil

List of Respondents side documents:Nil

**District Munsif,
Aundipatti.**

District Munsif Court, Aundipatti.

IA. No : 06/2026

&

IA. No : 7/2026

&

IA.No.8/2026

in

OS. No : 25/2023

Fair/ Draft Order

Dated: 01.06.2026



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