

**In the Court of II Additional District and Sessions Judge,
Thiruvallur @ Poonamallee.**

**Present: Thiru. C.Vijayakumar, B.A., B.L.,
II Additional District and Sessions Judge, Poonamallee.**

On this Wednesday, the 12th day of March 2025

I.A. No.1/2023 in O.S. No.61/2015

1. Thiru. Jagannathan, S/o Seeralan
2. Thiru. Premnath, S/o Jagannathan
3. Indu, D/o Jagannathan
4. Sindu, D/o Jagannathan

...Petitioners / Plaintiffs

Vs

1. Tmt. Lalitha W/o Jagannathan
2. Thiru. J. Madhan Raj, S/o Jagannathan
3. Thiru. Sadagopan, S/o Jagannathan
4. Tmt. Sujatha, W/o Mahalingam
5. Tmt. E. Sathya, W/o C. Elango,
6. Tmt. Chamundeeswari, W/o Late S.N. Nithyanandan
7. Tmt. Janaki Ammal (Died), D/o Seeralan and W/o Loganathan

... Respondents / Defendants

8. J. Gowri, D/o Janaki Ammal (Died)
9. S. Syamala, D/o Janaki Ammal (Died)
10. R. Neela, D/o Janaki Ammal (Died)

... Proposed Respondents / Defendants

This petition was coming up before me for final hearing on 13.02.2025 in the presence of Dr. R. Sampathkumar and K. Wilson, learned counsel for the Petitioners, M/s. I. Navaneetha Rani, learned counsel appeared for the Respondents 1 to 5 subsequently Respondents 1 to 5 counter not filed, the 6th Respondent set exparte in the main suit, M/s. R. Saravanan and K. Karthiga, learned counsel appeared for the Respondents 8 & 9 subsequently Respondents 8 & 9 counter not filed, Respondents 1 to 5 and 8 & 9 were set exparte, 10th Respondent called absent and set exparte and the 7th Respondent died while pending the suit, on perusal of entire material records, upon hearing the arguments on both sides and having stood over for consideration till this date this court pass the following:

ORDER

The petition is filed by the Petitioners/Plaintiffs, under section 5 of Limitation Act and section 151 of CPC prays to condone the delay of 357 days caused in filing the impleading petition to implead the legal heirs of the 7th Defendant Late. Janaki Ammal.

2) The crux of affidavit filed along with the petition by the 1st Petitioner/Plaintiff are as follows:

The 1st Petitioner is also the 1st Plaintiff in the suit. The 1st Plaintiff has filed this

proof affidavit on his behalf as well as on behalf of the other Plaintiffs. The Plaintiffs filed a suit seeking partition of the property mentioned in the schedule. During the suit's pendency, the 7th Defendant, Janaki Ammal, passed away on 23.06.2022, leaving the proposed Respondents/Defendants as her legal heirs. The 1st Petitioner repeatedly requested the Defendants to provide Janaki Ammal's legal heir certificate to implead the heirs but faced delays despite assurances from their Counsel. The legal heir certificate was eventually received in June 2023, and an impleading petition was promptly filed. This resulted in a delay of 357 days in filing the petition, attributed to obtaining the necessary certificate and not due to willful negligence. The 1st Petitioner asserts that denying the petition would cause irreparable loss, while the Defendants would not be prejudiced. Therefore, the 1st Petitioner prays to condone the delay of 357 days caused in filing the impleading petition to implead the legal heirs of the 7th Defendant late. Janaki Ammal.

3) The Respondents 1 to 5, Respondents 8 & 9 were called absent and set exparte on 20.12.2024, 6th Respondent already set exparte in the main suit, 10th Respondent was called absent and set exparte on 07.11.2024, 7th Respondent died while pending the suit.

4) The point for consideration is whether this petition is allowed or not ?

5) Point:

Heard both sides. Perused the documents.

6) The Petitioners herein is the Plaintiffs in the main suit O.S.No. 61/2015 which was filed for the prayer of declaration of sale deed executed by D.1 to D.4 in favour of D.5 as null and void, partition and allotment of 1/8th share in the suit property and permanent injunction not to alienating the suit property. Pending suit the 7th Defendant Mrs. Janaki Ammal died on 23.06.2022. To implead the legal heirs of the 7th defendant the Plaintiffs filed this petition. There was a delay of 357 days in filing the impleading petition. Hence the Petitioners herein filed a petition under Sec. 5 of the Limitation Act to condone the delay of 357 days in filing impleading petition in O.S. No. 61/2015.

7) The 7th defendant, Jankaiaammal, died on 23.06.2022. When no steps were taken to implead her legal heirs, the suit against the 7th defendant automatically abated upon the completion of 90 days under Article 120 of the Limitation Act. Following this, under Article 121, an additional 60 days are available to file a petition to set aside the abatement.

8) In this case, after the death of the 7th defendant on 23.06.2022, the suit against her automatically abated on 21.09.2022. The 60-day period to set aside the abatement ended on 20.11.2022. However, the Petitioner filed this petition on

16.08.2023, resulting in a delay of 268 days in filing the petition to set aside the abatement.

9) The Petitioner has filed this petition to condone the delay in filing the impleading of legal heirs petition, instead of condoning the delay in filing the petition to set aside the abatement. The reasons stated in the accompanying affidavit are satisfactory. The 7th defendant, Jankaiaammal, died on 23.06.2022. When no steps were taken to implead her legal heirs, the suit against the 7th defendant automatically abated upon the completion of 90 days under Article 120 of the Limitation Act. Following this, under Article 121, an additional 60 days are available to file a petition to set aside the abatement.

10) In this case, after the death of the 7th defendant on 23.06.2022, the suit against her automatically abated on 21.09.2022. The 60-day period to set aside the abatement ended on 20.11.2022. However, the Petitioner filed this petition on 16.08.2023, resulting in a delay of 268 days in filing the petition to set aside the abatement.

11) The Petitioner has filed this petition to condone the delay in filing the impleading of legal heirs petition, instead of condoning the delay in filing the petition to set aside the abatement. The reasons stated in the accompanying

affidavit are satisfactory. The petition is allowed. The Petitioner is hereby directed to file a fresh petition to set aside the abatement under Order 22 Rule 9 of the CPC.

In the result, this petition is allowed. The Petitioner is hereby directed to file a fresh petition to set aside the abatement under Order 22 Rule 9 of the CPC. Dictated to steno-typist directly, typed by him in computer, corrected and pronounced by me in the Open Court on this the 12th day of March 2025.

Sd/- C. Vijayakumar

**II Additional District and Sessions Judge,
Thiruvallur @ Poonamallee.**

Exhibits and Witnesses on both sides :- Nil.

Sd/- C. Vijayakumar

**II Additional District and Sessions Judge,
Thiruvallur @ Poonamallee.**

DRAFT/FAIR ORDER
I.A. No.1/2023 in O.S. No.61/2015
Date : 12.03.2025
II A.D.C. Poonamallee.