

IN THE COURT OF THE DISTRICT MUNSIF, TIRUTTANI

Present : Tmt. S. KAVIPRIYA, B.A., LLB.,
District Munsif, Tiruttani

Dated this Thursday the 28th Day of October 2021

IA.No.1 OF 2021 IN OS.No.173 OF 2013

...

1. P.V.Ekambara Mudalai(d9ed)
2. E. Jayakodi (died)
3. Valarmathi
4. Dhamodaran
5. Shanmugham
6. Ulagnathan
7. Velappan
8. Valli
9. P.E. Gnanam
10. Mohan

...Petitioners/ Plaintiffs

/Versus/

1. Nataraj
2. Murugesan
3. Sivalingam
4. Vedachalam
5. Kannan
6. Arunakiri
7. Ramesh
8. Deivaniyammal

..Respondents/Defendants

This petition came up before me for final hearing on 27.10.2021 in the presence of Mr.G. Kamalkannan, Advocate for petitioners and M/s. P. Kuppan, B. Jamuna, Advocates for 1 & 2 Respondents, endorsed that no counter and

M/s. S. Suresh and V. Prakash, Advocates for 3 to 8 Respondents and upon hearing both side and having stood over for consideration till this day, this court delivered the following:-

ORDER

This petition is filed under order 22 rule 9 of CPC to setaside the abatement caused due to the death of 1st petitioner.

Petition in brief:

2. While the suit is pending the 1st plaintiff was died on 23.09.2020 and leaving behind his legal heirs i.e., petitioners 2 to 10 are legalheirs to succeed the estate. While pending of the petition the proposed party No.2 was died on 21.01.2021. The legal heirs are residing various places and unable to intimate at earlier point of time to file steps in the above case. The certificate to get proper authority also delayed for that reasons, the petitioner not filed the petition in time and the proposed parties are utmost required to add in the above suit for proper and complete adjuration of the case. Due to the above the suit automatically abatement caused. Hence the abatement may please be set aside. If the legalheir are not implead and then the petitioner will be put to loss and hardship. Hence, this petition filed.

Counter filed by the 4th respondent and adopted by 3 to 8 respondents in brief as follows:

3. The said Ekambaram Mudali died leaving behind the petitioners 2 to 4 and 6 to 10 is incorrect since the parties available only up to 9 in the petition on the petitioners side and hence the petition is liable to be dismissed in limine. The 5th respondent's name is "Kanniappan"and not Kannan, and in such circumstances in the above petition my advocate filed vakalath in the above petition for the respondents 3 to 8 including myself and in which the 5th respondent signed as "Kanniappan" and not "Kannan" and as on this aspect, the petition is required to be amended unless if the petitioners not compeld the above defects properly, stated supra, the petition may be dismissed in limine.

Point:-

4. Whether the petitioners are entitled to the relief as sought for?

5. The suit was filed in the year 2013 and was pending for more than 8 years. Already condone delay Section 5 Limitation Act petition has been allowed and this petition is formal and consequential one. This court is of view that, in the interest of justice to prevent multiplicity of proceedings and to provide petitioner an opportunity to prove their case, as the proposed parties are necessary for proper adjudication of this case and the age of this suit, hence, this petition has to be allowed without costs.

6. In the result, this petition is allowed without costs.

Dictated to Steno – Typist, computerized by her directly, corrected and pronounced by me in open court, this the 28th day of October 2021.

Sd/- S. Kavipriya
District Munsif,
Tiruttani.

Both sides Exhibits and witnesses: NIL

Sd/- S. Kavipriya
District Munsif,
Tiruttani.