

IN THE COURT OF THE DISTRICT MUNSIF, TIRUTTANI

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

Dated this Friday the 23<sup>rd</sup> Day of April 2021

IA.No.2 OF 2019 AND IA.No.3 OF 2019 IN OS.No.97 OF 2009

...

E.A. Ramesh

...Petitioner/ Plaintiff

/Versus/

1. P.M. Radhkrishnan
2. Jayesh (Suit dismissed as against D2 on 03.03.2010)
3. Dhanammal
4. Bhaskar Reddy

... Respondents / Defendants 1 to 4

5. Saroja
6. Sulochana
7. Premkumar
8. Mohana
9. Sundarajan
10. Saravanan

...Proposed party 1 to 6 /Defendants 5 to 10

This petition came up before me for final hearing on 07.04.2021 in the presence of M/s. P.M. Narashiman, C. Thiruvenkadam and D. Dhananjayan, Advocates for petitioner and Suit dismissed as against R2 and Mr. C. A. Natarajan, Advocate for Respondents 1, 3, 4 and Respondent 5 to 10 called absent and set exparte and upon hearing both side and having stood over for consideration till this day, this court delivered the following:-

COMMON ORDER

These petitions are filed under order 22 rule 9 of CPC to set-aside the abatement of suit and to under order 22 Rule 4 of CPC to implead the legalheirs of the deceased 1<sup>st</sup> Respondent.

Petition in brief IA.No.2 OF 2019:-

2. The 1<sup>st</sup> respondent P.M. Radhkrishnan was died on 30.08.2018, the right to

sue survives and as his legal representatives, except the respondents No. 5 to 10 there are no other legal representatives to the deceased 1<sup>st</sup> respondent. So, the respondents No.5 to 10 have been added as legal representatives of deceased 1<sup>st</sup> respondent for full adjudication. As the right to sue survives, it is just and necessary to add proposed party as respondents No. 5 to 10 in the suit. Hence, the suit was pending for steps. There is delay of 40 days in filing the said petition.

Counter filed by the 3<sup>rd</sup> respondents and adopted by the 1<sup>st</sup> & 4<sup>th</sup> respondents  
averments in brief in IA.No.2 OF 2019:-

3. The suit was posted on 24.03.2017 for marking his documents on his side and that he was suffering from fever and that he could not able to come and dismissed the suit is not correct. The fact is that wantonly he was called absent and so this court called him absent and dismissed the suit. There are no bonafide merits in this petition. Hence, this petition is liable to dismissed.

Petition in brief IA.No.3 OF 2019:-

4. The 1<sup>st</sup> respondent P.M. Radhakrishnan was died on 30.08.2018 leaving behind his wife Saroa, his son, daughter Namely Sulochana, Perm Kumari, Mohana, Lakshmi (died), Sundarajan, Saravanan as legal heirs to succeed to his estate. The legal heirs of defendant No.1 is already is existing in this suit except is wife 1. Saroja W/o. Late. Radhakrishnan. The Respondent No.1, his daughter Sulochana ranked as Defendant No.2, Prem Kumari ranked as Defendant No.3, Mohana ranked as Defendant No.4, Sundarajan ranked as Defendant No.5, Saravanan ranked as defendant No.6 to implied as party to this suit. The cause of action survives and also right to sue survives and hence, it is just and necessary to add proposed party to implied Saroja and others party to suit as per the particulars given in the petition.

Counter filed by the 3<sup>rd</sup> respondents and adopted by the 1<sup>st</sup> & 4<sup>th</sup> respondents  
averments in brief in IA.No.3 OF 2019:-

5. The 1<sup>st</sup> respondent died on 30.08.2018 leaving behind him, his wife Saroa, his son, daughters as his sole legal heirs to succeed to his estate is true. The petitioner

has filed under order 22 Rule 4 CPC and the said petition is belated more than 3 months. The 1<sup>st</sup> defendant died on 30.08.2018 but he has filed this petition on 19.12.2018 which is beyond 3 months. There are no bonafide merits in this petition to condone in delay. Hence, this petition is liable to be dismissed.

Point:-

4. Whether the petitioner is entitled to the relief as sought for?

5. On considering the pleadings both sides and on perusal of records, it is found that the 1<sup>st</sup> respondent P.M. Radhakrishnan was died on 30.08.2018 and to implead the legal heirs of the deceased 1<sup>st</sup> Respondent, on delay of 40 days. Hence, prayed for set aside the abatement order and to implead the above legal heirs of the deceased 1<sup>st</sup> Respondent. The respondent had objected this petition that there are no bonafide merits in this petition. This Court of view that the reasons stated by the petitioner are sufficient cause and are liable to be considered. Hence, both petitions are to be hereby allowed on costs.

**IA.No.2 OF 2019:-**

**In the result, the petition is allowed on costs of Rs.350/- to the 3<sup>rd</sup> respondent. Costs to be paid on or before 28.04.2021 failing which this petition stands dismissed. Call on 28.04.2021.**

**IA.No.3 OF 2019:-**

**In the result, the petition is allowed on costs of Rs.350/- to the 3<sup>rd</sup> respondent. Costs to be paid on or before 28.04.2021 failing which this petition stands dismissed. Call on 28.04.2021.**

Dictated to Steno – Typist, computerized by her directly, corrected and pronounced by me in open court, this the 23<sup>rd</sup> day of April 2021.

Sd/- S. Kavipriya  
District Munsif,  
Tiruttani.

**Both sides Exhibits and witnesses: NIL**

Sd/- S. Kavipriya  
District Munsif,  
Tiruttani.