

IN THE COURT OF THE DISTRICT MUNSIF AT TIRUTTANI

**PRESENT: Selvi R.JAGATHEESWARI, M.L.,
DISTRICT MUNSIF, TIRUTTANI.**

Dated this Tuesday, the 4th day of June 2019

IA.No.454 OF 2018 and IA.No.455 OF 2018 in OS.No.61 OF 2012

...

1. Selvaraj
2. John

...Petitioners

/Versus/

1. Jeeva (Died)
2. Reeta
3. Yoburaj
4. Chandra
5. Kasthuri
6. Sigamani (died)
7. Jayachandran
8. Marriammal (died)
9. Selvi
10. Naleena
11. Vinoth
12. Rajalakshmi

Respondents 1 to 12 / Defendants 4 to 7

13. Keniyammal
14. Lakshmi

(Amended as per order in IA.No.354/17, dated 23.11.2017)

....Respondents 13 & 14/ Proposed parties 1 & 2

This petition came up before me for the final hearing on 03.06.2019 in the presence of Mr. V. Subramani, Advocate for petitioners and Respondents no.1, 6, & 8 died, Mr. C.A.Natarajan, Advocate for 7th Respondent and Respondents no. 2 to 5 and Respondents 9 to 14 remained exparte. Upon hearing both sides, upon perusing the records, and having stood over for

consideration till this day, this court delivered the following:-

COMMON ORDER

These petition are filed under order 22 Rule 9 of CPC to set aside the abatement order against 8th defendant and under order 22 Rule 4 of CPC to implead the legal heirs of 8th defendant as defendants 13 and 14.

Petition averments in brief are as follows in IA.No.434/2018:-

2. The plaintiffs have filed this suit against the defendants for declaration of right and title to the suit properties and also for permanent injunction in respect of the suit property. On 07.06.2016 the 8th defendant died, while the suit is pending. Now, the petitioners are filing this petition to set aside the abatement of the suit claim. The balance of inconvenience would be on the petitioners side if the abatement of the suit is not set-aside. If the abatement order is not set-aside, the petitioners will be put to loss and damages.

Petition averments in brief are as follows in IA.No.455/2018:-

3. The 8th defendant died on 07.06.2016 leaving behind her legal heirs. The legal heirs of 8th defendants have to be impleaded as defendants 13 and 14. The balance of inconvenience would be on the petitioners side if the abatement of the suit is not set-aside.

Common counter filed on behalf of the 7th respondent averments in brief are as follows:-

4. The petition is not maintainable either in law or on facts. There are no bonafide merits in this petition. Hence, prayed for dismissal of this petition.

Point for determination:-

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

Point:-

6. According to petitioners, the 8th respondent/defendant died on 07.06.2016 leaving behind her legal heirs who are the proposed defendants 13

and 14. The balance of inconvenience would be on the petitioners side if the abatement of the suit is not set-aside. Respondents resisted the petition by contending that there are no bonafide merits in this petition.

7. It is not disputed between the parties that the 8th respondent/defendant died on 07.06.2016 leaving behind the proposed parties as her legal heirs to succeed his estate.

8. Already petition to condone the delay in filing the set aside petition has been allowed and these petitions are formal and consequential one. This Court is of view that the proposed parties are the proper and necessary parties to the suit and they have to be impleaded for proper adjudication of the case. Hence, in the interest of justice, to prevent multiplicity of proceedings, to provide petitioners an opportunity to prove their case and for proper adjudication of the case these petitions have to be allowed as the proposed parties are the necessary parties of the case.

IA.No.454 OF 2018:-

In the result, this petition is allowed. No costs.

IA.No.455 OF 2018:-

In the result, this petition is allowed. No costs.

Dictated to my steno typist, typed by her directly, corrected and pronounced by me in open court, this the 4th day of June 2019.

**Sd/- R.JAGATHEESWARI,
DISTRICT MUNSIF
TIRUTTANI**

Both sides Exhibits and witness: NIL

**Sd/- R.JAGATHEESWARI,
DISTRICT MUNSIF
TIRUTTANI**

DRAFT / FAIR ORDER

IA.No.454 OF 2018

and

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in

OS.No.61 OF 2012

DD:04.06.2019

DMC/TRT