

IN THE COURT OF SUBORDINATE JUDGE, THIRUVOTTIYUR

**Present : Thiru. M.Vasanth Kumar, M.L.,
Subordinate Judge,
Thiruvottiyur**

Wednesday, the 13th day of December, 2023

I.A. No. 03 / 2022

in

O. S. No. 139 / 2022

**(Previously I.A. No. 1 / 2021 in O.S. No. 138 / 2010 on the file of
Principal Sub Court, Ponneri)**

(O.S. C.N.R. No. TNTR38-000650-2022)

1. Gnanambal (Died), W/o. Sundaram
2. Sundaram
3. P. Chithra, D/o. Sundaram
4. Suresh, S/o. Sundaram
5. Sudhakar, S/o. Sundaram

... Petitioners/Proposed Plaintiffs 2 to 5

- Vs. -

1. Suseela, W/o. Late T. Chandran
2. Boopathy, S/o. Late T. Chandran
3. Kasthuri, D/o. Late T. Chandran
4. Samundeeswari, D/o. Late T. Chandran
5. Sachu, D/o. Late T. Chandran
6. N. T. Krishnan, S/o. Late N. Thulukana Reddy
7. N. T. Jaganathan, S/o. Late N. Thulukana Reddy
8. N. T. Ganesan, S/o. Late N. Thulukana Reddy
9. N. T. Dillbashyam, S/o. N. Thulukana Reddy
10. Vanaroja, W/o. Selvanathan
11. Rani, W/o. Loganathan

12. Nagendhri, W/o. Sampath
13. C. Pangajam, W/o. Late Chokkalingam
14. C. Lakshmi, D/o. Chokkalingam
15. C. Soundarajan, S/o. Late Chokkalingam
16. C. Bhuvaneshwari, D/o. Late Chokkalingam

... Respondents / Defendants

This Petition has been originally filed before the Principal Sub Court, Ponneri on 05.02.2021 and the same was transferred to this court as per the Proceedings of the Hon'ble Principal District Judge, Tiruvallur in D.No.653/SJ/2022 dated 08.02.2022 and taken on file on 21.06.2023 and renumbered as I.A. No. 3/2022 in O.S. No. 139/2022 and it came before me for final hearing on 30.11.2023 in the presence of Thiru. T. Susairaj, Learned Counsel for the Petitioners / Proposed Plaintiffs 2 to 5 and Thiru. G. Ramesh, Learned Counsel for the 6th Respondent and M/s. J. Senthamilarasu, V. Selvam and A. Prabhakar, Learned Counsel for the 15th Respondent. R-1 to R-5, R-10 to R-14 and R-16 were called absent and set exparte. Tr. R. Krishnasamy, Learned Counsel for R-7 to R-9 endorsed No counter on 09.03.2023 and the Petition having stood over under this court's consideration till this date and upon perusing the records and hearing both side arguments, this court delivers the following :-

ORDER

1. This Petition has been filed by the Petitioners / Proposed Plaintiffs 2 to 5 Under Section 151 of C.P.C. to condone the delay of 87 days in setting aside the abatement.

2. **The precise of the affidavit filed by the Petitioners / Proposed Plaintiffs 2 to 5 is as follows :**

The wife of the 2nd Petitioner and the mother of the 3 to 5 Proposed Plaintiffs is the sold Plaintiff in the above suit and she had filed a suit against the Defendants

seeking for partition of the properties and for separate allotment of her share. The sole Plaintiff had died on 13.06.2020 leaving behind her husband the proposed 2nd Plaintiff and other proposed Petitioners / Plaintiffs as the legal heirs. Even during the lifetime of the Plaintiff, the 5th proposed Plaintiff have been attending the court on behalf of her. Due to sudden demise of the Plaintiff and due to the shock and bereavement it took some time for the proposed Plaintiffs to recover and also due to continued Pandemic, the proposed Plaintiffs were not able to meet the Advocate and take necessary steps in bringing ourselves as the legal heirs of deceased sold Plaintiff.

3. There has been a delay due to shock and mental agony on the sudden demise of the 1st Plaintiff and it took some time for the Petitioners to recover for the mental shock and subsequently there has been Pandemic throughout. In view of Petitioners failure to take necessary steps within the stipulated time abatement has occurred and also there has been a delay in filing the application under Section 5 of the Limitation act to set aside the abatement. There is no intentional delay on Petitioners part in taking necessary steps within the stipulated time. On each day of Petitioners failure in bringing themselves on record as legal representatives is not intentional and it was due to Petitioners mental shock and agony and followed by Pandemic fear. If the delay of 87 days is not condoned, in filing the setting aside the abatement application, the Petitioners will be put to irreparable loss and hardship. The abatement also has occurred due to the above said reasons.

4. The Proof Affidavit also has been filed when the sole Plaintiff was alive and subsequently due to her health condition as application was filed seeking the permission of evidence and the same was allowed. However before evidence by cross examination recorded the sole Plaintiff died. Once the proposed Plaintiffs were brought on record there will not be any delay on their part in any way in conducting the trial and also participate for earlier disposal of the case. If this application is not

allowed, the Petitioners will be losing their valuable right in getting the share of their mother for which the Plaintiff fought and died without realizing the fruits of the decree. Therefore, Petitioners prayed to condone the delay of 87 days in setting aside the abatement and to allow this Petition.

5. The precise of the counter filed by the 6th Respondent / 6th Defendant is as follows :

The 6th Respondent / 6th Defendant denied all the allegations except which are specifically admitted by him. The allegations contained in the petition are absolutely false, Frivolous and are concocted for the purpose of cheating and dragging the matter to lurch. The allegations in the petition are not maintainable either in law or on fact and hence denied by this respondent. Therefore the petitioners are deployed to strict proof of the same.

6. Mrs. Ganambal (died) who is Plaintiff in this suit, filed this suit in the Year of 2010 and summon was served to the Defendant in the year of 07 June 2015 for first hearing. This Plaintiff suppressed the entire facts and not impleaded a proper and Necessary Parties who purchase a Property before and after of 1992 year. Regarding the intention of the Plaintiff to create Multiplicity of Proceedings Making heavy expenses, Mental Agony, irreparable loss and hardship given to the defendants and the innocent Purchasers. The Chandran, Vanaroja, Plaintiff Ganambal (died), Rani and Nagaindari filed a suit in O.S. No. 257/1992 before the Learned Subordinate Court at Poonamalee for Suit for Partition of Plaintiffs 5/11th shares in the suit Properties and for final Decree in term of Preliminary Decree and allot the Plaintiffs 5/11th shares in the suit Properties by dividing the Property by metes and bounds by appointing an Advocate Commissioner at the time of Final Decree and for costs before the Learned Subordinate Judge at Poonamalee. The said Suit was contested suit and the Learned Mr. R. V. R. Deenadayalan, Subordinate Judge Pass an orders on Monday 17th day

of June 2002. The said Decree and Judgment is that, "the suit be and the same is hereby dismissed and that there will be no costs and that the 1st Plaintiff is entitled to file a separate suit with correct Particulars of Joint Family Properties".

7. Here the 1st Plaintiff is named as Chandran and it is pertinent to note that in this current suit one Mrs. Suseela and others 2 to 5 Defendants are the legal heirs of the said Mr. Chandran. After, the O.S. No.257 of 1992 ordered in the Year of 2002 Lapsing of 7 Years the said Plaintiff again files an Original Suit No. 138 of 2010 before this Learned Subordinate Court at Ponneri. The said Plaintiff filed a same suit again before learned Subordinate Court, Ponneri without implead the Proper and necessary Parties in this suit. The Plaintiff suppresses, hide the true things in the Suit Affidavit and falsely state the O.S. No.138 of 2010 Suit Affidavit that the previous case O.S. No.257 of 1992 is already dismissed before the Sub Ordinate Court at Ponnammallee because of Jurisdiction. It is pertinent to Note that the said Suit contested Suit and at the time the Ponnammallee Sub Court is Jurisdiction Court and the Ponneri there is no Sub Court.

8. While in the suit is pending before this Honble Court the said Plaintiff counsel is also aware that the Plaintiff is died on 13.06.2020. The 6th Defendant counsel herein represented that the petitioner / proposed Plaintiff Ganambal died on 13.06.2020. The petitioner / proposed Plaintiff admit in his affidavit that failure to take necessary steps within the stipulated time, abatement has occurred and also there has been a delay in filling the application under section 5 of the limitation act to set aside the abatement. The Plaintiff Ganambal has filed a suit with unsound mind. Thereby 6th defendant files a petition to appoint an advocate commissioner to ascertain medical / mental fitness of the plaintiff by the government Doctor and to produce the detail report. The same petition is numbered I.A. No.193/2018. In such circumstances, the plaintiff fail to get a certificate from the government

doctor that she is mentally fit person. Instead of that the plaintiff drag the case lastly recorded that the plaintiff is died on 13.06.2020.

9. On local enquiry the petitioner Ganambal (died) death is mysterious one and having doubt that the petitioner Ganambal (died) death is mysterious. The petitioner/ proposed plaintiff not clear the doubt of this Honble Court that the death. It is pertain to note that the petitioner / proposed plaintiff Sundaram first wife is suicide due to the harassment of said Sundaram. The plaintiff fails to furnish the evidences that the plaintiff Ganambal died on nature only. Being the plaintiff is unsound person taking advantage the proposed plaintiff 2 to 5 herein, may assault thereby causing death of Ganambal (died) for the motive for not taking steps on appoint an advocate commissioner to ascertain medical/mental fitness of the Plaintiff by the Government Doctor and to produce the detail report.

10. This petitioners has to file the impleading the legal heirs of the deceased within 90 days either from the date of death or from the date of knowledge. The delay of file the impleading the legal heirs of the deceased is willful and wanton only. The petitioner / proposed plaintiff taking steps after the period of 6 month of death of plaintiff Ganambal (died). The delay of 237 is not considered one. The petitioner/ proposed plaintiff suppress/hide the one of the elder daughter named as Mrs.Sujatha in this petition and also not taking any steps to implead along with other proposed plaintiff stated above. The petitioner/proposed plaintiff not filed death certificate, legal heir's certificate, post mortem report or Doctor Certificate of plaintiff Ganambal (died). The petition is therefore not maintainable in law, bad in law, devoid of merits, concocted with unsustainable reasons, ill- conceived, egregious, imalicious, imbibed with ulterior motive and crippled with avaricious and greedy intentions and prays this application to be dismissed and for costs.

11. The precise of the counter filed by the 15th Respondent / 15th Defendant is as follows :

The 15th Respondent denied all the averments except which are specifically admitted by him. The Petition as framed by the Petitioners / proposed Plaintiffs is not at all maintainable either in law or on facts. The Petitioner herein was done the Ratification Deed on 27.07.2022 which is registered as Document No.10509 of 2022 on the file of S.R.O Ambattur. In the said document the S.No. 103/1B and 84/2A which was mentioned in the said Ratification Deed which was subject matter of the present suit. The suit property was already ratified by the Petitioner means what is the purpose of contesting the case itself. The 1/70th share in the property and the same already received by them in Survey No.103/1B. Advance amount of Rs.50,000/- received in 1997 and considerable amount received vide Document No.10509 of 202 at the time of Ratification Deed.

12. Further, in this regard it was clearly show the attitude of the Petitioner and the 15th Respondent want to point that the Judgment in O.S. No. 257 of 1992 on the file of Sub Judge at Poonamallee, the Petitioner mother was also a party in this also the schedule of property was already given based on the Judgment itself and the suit itself not maintainable. The Petitioners does not having any locus stand to pray this prayer as the Petitioner till date not even party to the original suit and the present petition is filed to implead but already the Petitioner was made a ratification at this point, the present application is not maintainable. There is no prima facie case and even the balance of convenience is also in favour of the Respondent only. The contention of the Petitioner is totally wrong, thereby the 15th Respondent prayed for dismissal of this Petition.

13. Point for Consideration is :

Whether the Petition is liable to be allowed or not ?

Point :

This is an application filed by the filed by the Petitioners / Proposed Plaintiffs 2 to 5 Under Section 151 of C.P.C. to condone the delay of 87 days in setting aside the abatement. This is a suit filed by the Plaintiff seeking for the relief of Partition, Declaration of Partition Deed dated 29.03.2006 as null and void and for the relief of Permanent injunction against the Defendants.

14. This is an application filed by the Petitioners / Proposed Plaintiffs who are the legal-heirs of the plaintiff. The reason assigned by the Petitioners is due to sudden demise of the Plaintiff and due to the shock and bereavement, it took some time for the proposed Plaintiffs to recover and also due to continued Pandemic, the proposed Plaintiffs were not able to meet the Advocate and take necessary steps in bringing ourselves as the legal heirs of deceased sold Plaintiff. Hence the counsel for Petitioners prayed that if the petition is not allowed then the petitioners will be seriously prejudiced.

15. On the other hand, the main objection raised by the 6th Defendant is that the Petitioner had suppressed and hide one of the legal-heir of the deceased Gnanammal namely the elder daughter Mrs.Sujatha was not impled in this application, thereby the Respondents prayed to dismiss the application.

16. During the arguments the Petitioners produced the photocopy of the Death Certificate of Gnanammal and also Legal-heirs certificate issued by the Tahsildar, Ponneri Taluk, Tiruvallur District thereby in which it has been found that, 1. Mr. M. Sundaram, 2. P. Chithra, S. Suresh and S.Sudhakar were the legal-heirs of deceased Gnanammal. Further, the Petitioner contended that the said Mrs.Sujatha is not the daughter of Gnanammal. The said Mrs.Sujatha was not born to Gnanammal and she is the daughter of the 1st wife of Tr.Sundaram and hence she will not come under the purview of the legal-heir of the deceased Gnanammal. Hence the

objections raised by the 15th Respondent that the Petitioners herein had executed a Ratification Deed on 27.07.2022 in Document No.10509 of 2022 on the file of SRO Ambattur. Thereby, the Petitioners does not have any locus-standi to contest the case and he also stated that the Petitioner's mother was a party to the proceedings in O.S. No. 257 of 1992 on the file of Sub Judge at Poonamallee and he prays to dismiss the application. The above contentions raised by the 15th Respondent cannot be appreciated at this juncture for the reason that the Ratification Deed and the previous suits were all to be considered on merits at the time of final hearing of the suit. Whereas the present application is filed only in order to condone the delay in bringing the legal-heirs of the deceased Plaintiff on record. Hence I do not find any merits in the submissions made by the Respondents. On the other hand the reason staed by the Petitioners to condone the delay is satisfactory in nature. Hence the delay is condoned, thereby the Petition is allowed.

In the result, this Interlocutory Application is allowed. No Costs.

Dictated by me to the steno-typist, typed by her, corrected and pronounced by me in the open court on this the 13th day of December 2023.

**Subordinate Judge,
Thiruvottiyur.**

PETITIONERS SIDE EVIDENCE & EXHIBITS :- - NIL -

RESPONDENTS SIDE EVIDENCE & EXHIBITS :- - NIL -

**Subordinate Judge,
Thiruvottiyur.**

Draft / Fair Order

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D.D. 13.12.2023.