

**IN THE COURT OF THE DISTRICT MUNSIF CUM JUDICIAL
MAGISTRATE, SHENCOTTAH**

**PRESENT : THIRU.M.SUNIL RAJA, B.A.M.L.,
DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE, SHENCOTTAH**

Dated this the 19th day of February 2025

I.A.No.07 of 2022, I.A.No.09 of 2024 and I.A.No.10/2024

and

**I.A.No.12 of 2024 in I.A.No.01 of 2022, I.A.No.13 of 2024 in I.A.No.02 of
2022, I.A.No.14 of 2024 in I.A.No.03 of 2022, I.A.No.15 of 2024 in I.A.No.01
of 2022, I.A.No.16 of 2024 in I.A.No.02 of 2022, I.A.No.17 of 2024 in
I.A.No.03 of 2022**

in

O.S.No.103 of 2015

I.A.No.12/2024 to I.A.No.17/2024

Jesimabanu

... Petitioner/Plaintiff

..Vs..

1. Subbiah Nadar (Died)

2. Parvathiammal (Died)

... Respondents/Defendants

1. Muthu

2. Duraichi

3. Durai

4. Kulalamani

**....New respondents/ and to added
3 to 6 defendants**

I.A.No.07/2022, I.A.No.09/2024 and I.A.No.10/2024

Jesimabanu

... Petitioner/Plaintiff

..Vs..

1. Subbiah Nadar (Died)

2. Parvathiammal (Died)

... Respondents/Defendants

3. Vellaiammal

4. Durai

5. Courtallakannu (Died)

6. Muthu

7. Kulali

8. Sutha

....New respondents/ and to added
3 to 8 defendants

These petitions came up before me for final hearing in the presence of Tr.K.Esakki Durai Learned counsel for the Petitioner/Plaintiff and Tr.R.Jegadeesan Learned counsel for the Respondents/Defendants. On hearing both sides, upon perusing the material records, documents and having stood over for consideration till date this court delivers the following....

Common Order

The Petitioner/Plaintiff side filed the following 9 petitions for various reliefs. However, the petitions were filed solely for the purpose of impleading the legal representatives of the deceased defendants. Since the issue is common, all the petitions are taken together for consideration.

Petition Number	Purpose of the Petition
IA No.07/2022	To implead the Legal representatives of the Deceased defendants
IA No.09/2024	To condone the delay in filing Abatement
IA No.10/2024	To set aside the Abatement
IA No.12/2024 in IA No.01/2022	To condone the delay in filing restore petition to restore the IA No.01/2022

IA No.13/2024 in IA No.02/2022	To condone the delay in filing restore petition to restore the IA No.02/2022
IA No.14/2024 in IA No.03/2022	To condone the delay in filing restore petition to restore the IA No.03/2022
IA No.15/2024 in IA No.01/2022	To restore the IA No.01/2022
IA No.16/2024 in IA No.02/2022	To restore the IA No.02/2022
IA No.17/2024 in IA No.03/2022	To restore the IA No.03/2022

Both sides were heard. The case documents were reviewed.

2. The issue to be resolved in the above petitions filed by the plaintiff is whether the above petitions are admissible.
3. To resolve all the above petitions filed in the original suit, it is necessary to review the original suit proceedings. Therefore, the proceedings and their nature are explained below in this order.
4. This original Suit was filed by the plaintiff in 2015 against two defendants seeking recovery of possession and monetary relief.
5. Summons were sent to both defendants, and on 03.11.2015, Advocate Mr. R. Jagadeesan filed a vakalatnama on behalf of the defendants. The defendants were given time until 20.10.2016 to file a written statement, but they failed to do so, resulting in an ex parte order against both

defendants. Subsequently, an ex parte judgment and decree were passed on 28.06.2017.

6. Later, the defendants filed IA No.256/2018 in 2018 to set aside the ex parte judgment and decree, which was allowed on 17.03.2021. Accordingly, the ex parte judgment and decree dated 28.06.2017 were set aside, and the defendants' written statement was taken on record, and the case was reopened for trial.
7. On 22.04.2021, issues were framed in this suit, and it was listed for trial. During the trial on 26.08.2021, the plaintiff filed a memo stating that the first defendant had died on 15.09.2019 and the second defendant had died on 05.04.2019. Therefore, the case was adjourned from 26.08.2021 to implead the legal representatives of the deceased defendants.
8. In this situation, on 13.04.2022 the plaintiff filed the following petitions for the reliefs;
 - IA No.01/2022 under Order 22 Rule 4 of the Civil Procedure Code to implead the legal representatives of the deceased defendants in the original suit.
 - IA No.02/2022 was filed to set aside the abatement due to the failure to implead the legal representatives in time, and
 - IA No.03/2022 was filed to condone the delay in filing the above petitions. These petitions were filed on 13.04.2022.
- 8.1. While these petitions were pending, Advocate Mr. Jagadeesan, who had appeared for the defendants, appeared for the legal representatives of the deceased defendants and filed a memo on 13.07.2022 stating that the

details of the legal representatives were incorrect and that some additional defendants needed to be impleaded.

- 8.2. Subsequently, the plaintiff filed a memo on 17.08.2022 requesting the court to direct the defendants to provide the names and addresses of the new legal representatives, as the details were incomplete.
- 8.3. The advocate for the legal representatives of the deceased defendants did not provide the complete details to the court. Therefore, the petitions IA No.01/2022, IA No.02/2022, and IA No.03/2022 were dismissed on 17.11.2022 due to incorrect details of the legal representatives and default to correct the same.
- 8.4. Later, the plaintiff filed IA No.07/2022 on 02.11.2022 to implead the legal representatives of the deceased defendants in the original suit. Since there were errors in the names of the legal representatives, IA No.08/2024 was filed on 03.01.2024 to amend the petition, which was allowed. The amended petition was filed, and a counter was filed by the defendants on 14.03.2024, which is currently pending.
- 8.5. Additionally, the plaintiff filed IA No.09/2024 on 21.03.2024 to condone the delay in filing the petition to implead the legal representatives, and IA No.10/2022 to set aside the abatement, which are also pending with counters filed by the defendants.

9. In this situation, the plaintiff has filed the following petitions:

Petition Number	Purpose of the Petition
IA No.12/2024 in IA No.01/2022	To condone the delay in filing restore petition to restore the IA No.01/2022

IA No.13/2024 in IA No.02/2022	To condone the delay in filing restore petition to restore the IA No.02/2022
IA No.14/2024 in IA No.03/2022	To condone the delay in filing restore petition to restore the IA No.03/2022
IA No.15/2024 in IA No.01/2022	To restore the IA No.01/2022
IA No.16/2024 in IA No.02/2022	To restore the IA No.02/2022
IA No.17/2024 in IA No.03/2022	To restore the IA No.03/2022

10. Counters have been filed by the defendants against these petitions, stating that since IA No.07/2022, IA No.09/2024, and IA No.10/2024 are pending for the same reasons, the current petitions should not be accepted due to Constructive Res Judicata and should be dismissed as they were filed late.
11. Considering all the case proceedings and documents, it is noted that both defendants in the original Suit died in 2019. According to Order 22 Rule 10A of the Civil Procedure Code, 1908, the advocates appearing for the parties must inform the court about the death of their clients as soon as they become aware of it. The responsibility to inform about the death lies with the advocates.
 - 11.1. After the exparte judgment and decree were passed on 28.06.2017, Advocate Mr. Jagadeesan filed IA No.256/2018 on 28.04.2018 to set aside the ex parte judgment and decree. This petition was pending for hearing from 02.08.2018, and even after the defendants died on 05.04.2019 and 15.09.2019, their advocate Mr. Jagadeesan did not inform the court about their deaths. Therefore, the court was unaware of

the defendants' deaths and continued the hearing, passing an order on 17.03.2021.

- 11.2. After the order was passed in IA No.256/2018 on 17.03.2021, the original case was reopened, the written statements filed by the defendants were taken on file, issues were framed on 22.04.2021 and posted for Trial. During the trial, the plaintiff filed a memo on 26.08.2021 stating that both defendants had died in 2019.
- 11.3. Considering these details, it is clear that the advocate for the defendants should have taken steps to implead the legal representatives of the deceased defendants in IA No.256/2018 immediately after their deaths in April and September 2019. However, the deaths were concealed, and an order was passed. Later, during the trial, the plaintiff learned about the deaths and took steps to implead the legal representatives in the original case.
- 11.4. In the petitions IA No.01/2022, IA No.02/2022, and IA No.03/2022, the same advocate Mr. Jagadeesan appeared for the legal representatives of the deceased defendants and filed a memo stating that the details of the legal representatives were incorrect. However, he did not provide the complete names and addresses of the legal representatives.
- 11.5. Due to this situation, the petitions IA No.01/2022, IA No.02/2022, and IA No.03/2022 filed by the plaintiff were dismissed on 17.11.2022 due to incorrect details of the legal representatives. Subsequently, the plaintiff filed IA No.07/2022, IA No.09/2024, and IA No.10/2024 with the correct details to implead the legal representatives of the deceased defendants. The defendants have raised the argument of Constructive Res Judicata against these petitions.

12. The Hon'ble Supreme Court, in the case of ***Prem Kishore & Ors. v. Brahm Prakash & Ors (2023 LiveLaw (SC) 266)***, has elaborated on Res Judicata and explained that an order closing the proceedings in a case cannot be construed as a final decision on merits so as to bar a subsequent suit. Accordingly, it is clear that orders dismissed on the basis of default or errors and not on merits cannot be considered as Res Judicata / Constructive Res Judicata.
 - 12.1. Therefore, the argument that the plaintiff cannot file further petitions after the dismissal of IA No.01/2022, 02/2022, and 03/2022 due to errors and default is not valid. The petitions IA No.07/2022, 09/2024, and 10/2024, filed with the correct details of the legal representatives of the deceased defendants, are not barred by Res Judicata and are maintainable.
 - 12.2. Since the petitions IA No.07/2022, 09/2024, and 10/2024 are maintainable and acceptable, there is no need to consider the petitions IA No.12/2024 to 17/2024 filed by the plaintiff to restore the previously dismissed petitions IA No.01/2022, 02/2022, and 03/2022 and to condone the delay in filing them. Therefore, the newly filed petitions IA No.12/2024 to 17/2024 are closed.
 - 12.3. Considering the conduct of the defendants and their advocate, who failed to inform the court about the deaths of the defendants in a timely manner, resulting in the exparte order and decree being set aside and the original case being reopened, and the failure to provide complete details of the legal representatives, the delay in the case proceedings is due to these actions.

- 12.4. Therefore, after various difficulties, the petitions IA No.07/2022, 09/2024, and 10/2024 filed by the plaintiff with the correct details of the legal representatives of the deceased defendants to implead them in the original suit, to set aside the abatement, and to condone the delay in filing these petitions are allowed. This will not cause any prejudice to any party in the case.
- 12.5. Since the defendants have died and their legal representatives are not disputed, and the right to sue survives, the legal representatives must be impleaded in the original suit. Failure to do so would cause irreparable loss to the plaintiff who filed the original case. It would also appear that the defendants successfully set aside the ex parte judgment and decree and nullified the case.
- 12.6. Therefore, the petitions IA No.07/2022, 09/2024, and 10/2024 filed by the plaintiff to implead the legal representatives of the deceased defendants in the original suit, to condone the delay, and to set aside the abatement are allowed.

13. Result Portion:

Finally, the following petitions are allowed and closed:

1. **IA No.07/2022:** Petition to implead the legal representatives of the deceased defendants – **Allowed.**
2. **IA No.09/2024:** Petition to condone the delay in filing abatement – **Allowed.**
3. **IA No.10/2024:** Petition to set aside the abatement – **Allowed.**

4. **IA No.12/2024 in IA No.01/2022:** Petition to condone the delay in filing restore petition to restore IA No.01/2022 – **Closed.**
5. **IA No.13/2024 in IA No.02/2022:** Petition to condone the delay in filing restore petition to restore IA No.02/2022 – **Closed.**
6. **IA No.14/2024 in IA No.03/2022:** Petition to condone the delay in filing restore petition to restore IA No.03/2022 – **Closed.**
7. **IA No.15/2024 in IA No.01/2022:** Petition to restore IA No.01/2022 – **Closed.**
8. **IA No.16/2024 in IA No.02/2022:** Petition to restore IA No.02/2022 – **Closed.**
9. **IA No.17/2024 in IA No.03/2022:** Petition to restore IA No.03/2022 - **Closed.**

This orders are transcribed via speech-to-text on my computer, edited and corrected by me, and pronounced in open court today, the 19th of February 2025.

District Munsif Cum
Judicial Magistrate, Shencottah

1. Petitioner/Plaintiff side witness and Documents:NIL

2. Respondents/Defendants side witness and Documents:NIL

District Munsif Cum
Judicial Magistrate, Shencottah