

**In the Court of the II Additional District Judge, Thoothukudi.
Present: Tmt. M.Breetha, M.L.,
II Additional District Judge, Thoothukudi.**

Monday, the 2nd day of March 2026

I.A.No.02/2025

In

O.S.No.200/2024

1. Shanmugathai (Died)

2. Santhi

3. Muthumari

..Petitioners/Legal heirs
of Plaintiff

.Vs.

1. Micheal Arul Reegan

2. Antony Micheal Nicholas

3. Chandrabose

4. Balaganesh

.. Respondents/Defendants

This petition came on 20.02.2026 for final hearing before this court in the presence of Advocate Tr.R.Kanthakumar, for the petitioners and of Advocate Thiru.A.Marks, for the respondents and upon hearing the arguments on the side of the petitioners and respondents and having stood over for consideration till this day, this court delivered the following:

ORDER

This petition has been filed by the petitioners under Section 5 of Limitation Act to condone the delay of 107 days caused in filing the petition to implead the legal heirs of deceased plaintiff.

2) Brief averments of the petition and affidavit:

The petitioners are the legal heirs of plaintiff in the suit and has averred that the

main suit has been filed seeking relief of declaration and permanent injunction and the plaintiff died on 26.09.2024 and that on 18.04.2025, after the death of the plaintiff, they got the will deed executed by her in favour of petitioners 2 and 3 and that there is a delay of 107 days in filing the petition to set aside the abatement caused on the death of the plaintiff and hence, constrained to file this petition and prays to allow the same.

3) Brief contentions of the counter filed by the 1st respondent adopted by respondents 2 to 4:

The respondents have denied all the averments made in the petition and have contended that Shanthi, Muthumari, Petchiammal @ Petchithai, Rathinadevi and Nathan @ Soka Nathan are his legal heirs and that the Will deed said to be executed in favour of the petitioners 2 and 3 is not acceptable and that it is just and necessary to implead all the legal heirs of the deceased Shunmugathai and prays for dismissal of the petition with costs.

4) The point for consideration is whether this petition can be allowed or not?

5) Both sides are heard. Records have been perused.

6) Both sides are heard. Records have been perused. The 1st plaintiff in the main suit died. The petitioner has averred that on 18.04.2025, after the death of the plaintiff, they got the will deed executed by her in favour of petitioners 2 and 3 and therefore, the legal heirs could not be impleaded in time. The suit was abated for non-impleadment of the above said legal heirs within the period of limitation. There is a delay of 107 days to set aside the above said abatement. It is the contention of the respondents that Shanthi, Muthumari, Petchiammal @ Petchithai, Rathinadevi and

Nathan @ Sukanathan are his legal heirs and that the Will deed said to be executed in favour of the petitioners 2 and 3 is not acceptable and that it is just and necessary to implead all the legal heirs of the deceased Shunmugathai.

7) Firstly, it is necessary to find out whether all the legal heirs of Shunmugathai is to be impleaded as parties. It would be relevant to refer to Order 22 and Rule 3 of CPC and it reads as follows:

“(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff”.

8) The above said requires the filing of application to implead the “**Legal Representatives**” of the deceased plaintiff. Section 2(11) of CPC defines legal representatives and it reads as follows;

“legal representative” means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;

9) It states that legal representative means a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued. In the case on hand, the petitioners 2 and 3 stand in the place of and represents the interest of the deceased plaintiff by virtue of the Will said to be executed by her. In the said circumstances, this court is of the view that it is sufficient to implead the persons, on whom the suit property is said to be devolved on the death of the plaintiff and it is not necessary to implead all the legal heirs of the deceased plaintiff.

10) Now, it is just and necessary to find out whether there is sufficient cause to condone the delay of 107 days? The Hon'ble Apex Court in the case ***Ram Nath Sao Vs. Gobardhan Sao reported in 2002(1) CTC 769***, has held that sufficient cause, in connection with the delay in filing the application to set aside abatement or similar provision should receive liberal construction so as to advance substantial justice.

11) In the above said decision, the Hon'ble Apex Court has reiterated that in a petition to condone the delay in filing the application to set aside the abatement, it should be liberally considered, so as to advance substantial justice. On the backdrop of the above said principle, the reason stated by the petitioner herein is considered. The petitioner has stated that they obtained the Will deed executed by the plaintiff only on 18.04.2025 and therefore, there was a delay of 107 days in filing the petition to set aside the abatement. Though the respondent has disputed the reason stated by the petitioner, considering the number of days of delay, this court is of the view that in order to advance substantial justice, the above said delay can be condoned. For the reasons stated above and in the interest of justice, the delay of 107 days is condoned.

But, at the same time, considering the hardships caused to the respondents herein, this court is of the view that such hardships may be compensated by terms of costs.

12) In the result, this petition is allowed on condition that the petitioners shall pay a cost of Rs.500/- (Rupees Five hundred only) to the respondents on or before 16.03.2026; failing which, this petition stands automatically dismissed. Call on 16.03.2026.

Dictated to the Steno-typist, transcribed and typed by her, corrected and pronounced by me in open Court, this the 2nd day of March 2026.

**II Additional District Judge,
Thoothukudi.**

Witnesses examined by the petitioner: NIL

Witnesses examined by the respondents: NIL

Exhibits marked by the petitioner: NIL

Exhibits marked by the respondents: NIL

**II Additional District Judge,
Thoothukudi.**

