

IN THE COURT OF THE II ADDITIONAL DISTRICT JUDGE,
THOOTHUKUDI.

Present : Tmt. M. Breetha, M.L.,
II Additional District Judge,
Thoothukudi.

Friday, this the 12th day of June 2026

I.A. No. 3/2025 and 4/2025

in

O.S. No.200/2024

1) Shanmugathai ... Plaintiff / Died
2) Shanthi
3) Muthumari ...Petitioner/Legal Heirs of plaintiffs
/ Vs /

1) Micheal Arul Reegan
2) Anthony Micheal Nicholas
3) Chandrabose
4) Balaganesh ... Respondents/Defendants

These petitions came up before this Tribunal on 05.06.2026 for final hearing in the presence of Thiru.R.Kanthakumar, Learned advocate for the petitioner and Thiru.A.Marks, Learned advocate for the Respondents 1 to 4 in the main petition and after hearing the arguments, stood over for consideration till this date and this court passed the following : -

COMMON ORDER

I.A.No.3/2025: This petition has been filed under Order 22 Rule 9 of C.P.C to set aside the abatement caused on the death of the plaintiff Shanmugathai.

I.A.No.4/2025: This petition has been filed under Order 22 Rule 3 of C.P.C to bring the legal heir of the deceased Shanmugathai as plaintiffs in the main petition.

2) Brief averments in the Petition:

The petitioners are the legal representatives 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 the suit was abated for not impleading the legal representatives of the deceased plaintiff and hence, constrained to file this petition to set aside the abatement caused on the death of the plaintiff and prays to allow the same.

3) Brief contentions of the counter filed by the 1st respondent and 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 @ Sukanathan are the legal heirs of Shunmugathai 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) The 1st plaintiff in the main suit died. The petitioners have 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 representatives could not be impleaded in time and that the suit was abated for non-impleadment of the legal representatives within the period of limitation and that it is just and necessary to set aside the abatement and to implead the legal representatives of the deceased plaintiff.

It is the contention of the respondents that Shanthi, Muthumari, Petchiammal @ Petchithai, Rathinadevi and Nathan @ Sukanathan are the legal heirs of Shunmugathai 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 are 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 section 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) The above said provision 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 set aside the abatement and to grant permission to implead the legal representatives of the deceased plaintiff. The petitioner has stated that they obtained the Will deed executed by the plaintiff only on 18.04.2025 and therefore, they couldn't be impleaded as legal representatives within time. Further, they claim them to be the legal representatives based on a Will deed. The certified copy of the Will deed has been produced along with this petition. Though the respondents have disputed the Will relied upon by the petitioner, this court is of the view that the validity of the Will could be decided in the main suit and it cannot be decided in this petition. As the legal representatives of the deceased Shanmugathai, this court is of the view that it is just and necessary to implead the petitioners as parties in the main suit.

11) For the reasons stated above and in the interest of justice, these petitions stands allowed.

In the result,

I.A.No.3/2025: This petition stands allowed. No costs.

I.A.No.4/2025: This petition stands allowed. No costs.

The order was dictated to the Steno-Typist, directly typed by her, in the computer, corrected and pronounced by me, in open court, this the 12th day of June 2026.

**II Additional District Judge,
Thoothukudi.**

Petitioner side witness : NIL

Petitioner side Documents: NIL

Respondent side witness and Documents: NIL

**II Additional District Judge,
Thoothukudi.**

**II ADJ, Thoothukudi
Draft/Fair
Common Order**

**I.A. No. 3/2025 and
I.A. No. 4/2025
in
O.S. No. 200/2024**

Dated: 12.06.2026